

THE SOUTH CHINA SEA DISPUTES: ASEAN'S ROLE
IN ADDRESSING DISPUTES WITH CHINA

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The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

ABSTRACT

THE SOUTH CHINA SEA DISPUTES: ASEAN'S ROLE IN ADDRESSING DISPUTES WITH CHINA, by Major Nguyen Hong Cuong, 104 pages.

In recent years, tensions in the South China Sea have escalated due to China's assertiveness in the territorial disputes and other claimants' responses. These evolvments have made the region one of the hot spots in the world, and could directly influence regional security and international trade. The Association of Southeast Asian Nations (ASEAN), as the regional key stakeholder, has made efforts to defuse tensions among the claimants and seek a long-term agreement in negotiation with China for peace, stability, security and development in the region.

This research examines how ASEAN, as a stakeholder of a unified block of regional states, could address the South China Sea disputes with China. It begins with the review of the nature and status of the Paracels and the Spratly Islands disputes between China, Vietnam and other claimants. The paper then uses Realism and Liberalism to analyze China's interests, strategies, policy and actions aiming at achieving its aims in the South China Sea. The paper will also evaluate ASEAN's conflict management principles, its security architectures, and its efforts in working with China to implement the Declaration of Conduct of Parties in the South China Sea (DoC) and negotiating for a binding Code of Conduct in the South China Sea (CoC). It ends by arguing that although ASEAN is not able to address the South China Sea disputes, it still plays the key role in managing tensions, building trust and mutual understanding, and cooperating with China to find a long-term solution which is acceptable for all South China Sea claimants.

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ACRONYMS

ADMM	ASEAN Defense Ministers' Meeting
AMM	ASEAN Ministerial Meeting
ARF	ASEAN Regional Forum
ASEAN	The Association of Southeast Asian Nations
ASEAN+3	+ China, Japan and South Korea
CoC	Code of Conduct in the South China Sea
DoC	Declaration on the Conduct of Parties
EEZ	Exclusive Economic Zone
UNCLOS	UN Convention of the Law of the Sea

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CHAPTER 1

INTRODUCTION

Over the last several years, the complicated and long disputed South China Sea has become a source of potential interstate conflict among its claimants. Tensions between China and other claimants, mainly the Philippines and Vietnam, have been escalating due in part to China's more assertive stance insisting upon its sovereignty over the disputed area. The Association of Southeast Asia Nations (ASEAN) has been the key player in defusing the heated quarrel between China and its four involved member states, and maintaining regional stability. However, what it has done is far below what is expected from its potential in dealing with a major regional security issue. ASEAN's weakness in solving this issue, apart from the divergent interests of its members in the South China Sea and the limitation of the ASEAN Way, is attributed to China's hesitation to discuss the Code of Conduct (CoC), and its efforts to divide ASEAN by attracting several ASEAN member states like Cambodia, Myanmar and Laos, to stand either neutral or to support China in the disputes.

This thesis will examine what ASEAN can do as a key stakeholder to address China's claims that conflict with ASEAN members' claims in the South China Sea. It starts by giving an overview about ASEAN and the background of the South China Sea. It then looks at ASEAN disputes with China in the South China Sea, specifically focusing on the key disputants, namely China, Vietnam and the Philippines.

ASEAN

Before one can look at how ASEAN approaches its security problems, it is important to have a background understanding of the Association and its development. ASEAN was founded on 8 August 1967 in Bangkok, Thailand, as marked by the signing of the ASEAN Declaration (Bangkok Declaration) by the foreign ministers of its five founder nations, namely Indonesia, Malaysia, Philippines, Singapore, and Thailand. The main aims of the organization were to strengthen cooperation in the economic, social, cultural, technical, educational and other fields, and in the promotion of regional peace and stability through abiding respect for justice and the rule of law and adherence to the principles of the United Nations Charter.¹ At its first Summit, in Bali in 1976, the ASEAN leaders signed the Treaty of Amity and Cooperation, which set out the principles of: mutual respect for sovereignty and territorial integrity; non-interference in the internal affairs of one another; the “settlement of differences or disputes by peaceful means;” the renunciation of the threat or use of force; and effective cooperation.² In the 1980s and 1990s, Brunei, Vietnam, Laos, Myanmar and Cambodia joined the Association, respectively. At the 9th ASEAN Summit in 2003, the ASEAN leaders agreed to establish an ASEAN community as a place where all its members come together to build up a better life for everyone. Five years after that, at their 12th Summit in January 2007, the leaders affirmed their strong commitment to accelerating the foundation of this community by 2015. The community is comprised of three pillars, namely the ASEAN Political-Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Community.³ Over the last 46 years, ASEAN has demonstrated its strength and

resilience in coping with internal and external challenges, and it is now on its way to becoming a rule-based organization with its own Charter and legal personality.⁴

Background of the South China Sea

The South China Sea covers an area of about 3,500,000 square kilometers (1,400,000 square miles). Stretching from the Singapore and Malacca Straits in the southwest to the Straits of Taiwan in the northeast, the sea comprises over 250 islands, atolls and reefs, a mass majority of which are uninhabited. They can be grouped into four main archipelagoes, namely the Pratas, Macclesfield Bank, Paracels, and Spratlys.⁵ The importance of the South China Sea is defined by its geostrategic location and rich natural resources.

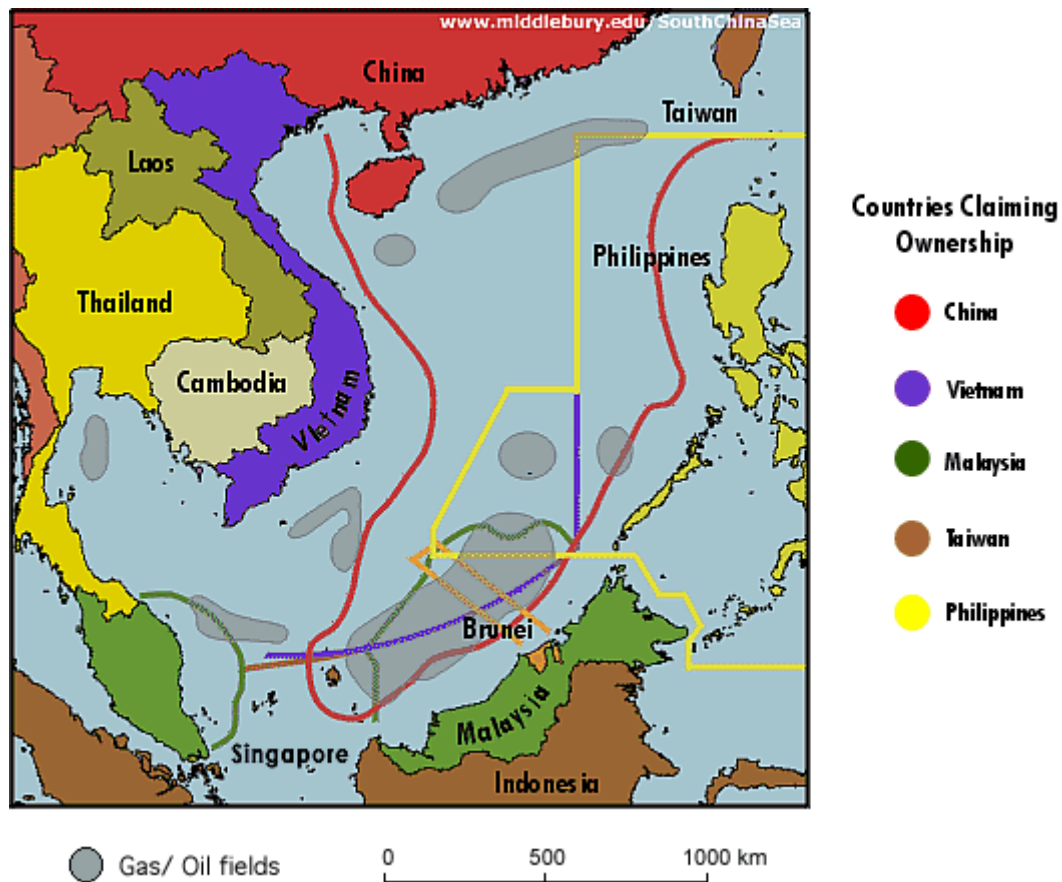


Figure 1. The Overlapping Claims in the South China Sea

Source: Cire Sarr, "Overlapping EEZ Claims and Oil Fields," The South China Sea, 19 August 2011, <http://www.southchinasea.org/2011/08/19/overlapping-eez-claims-and-oil-fields/> (accessed 27 August 2013).

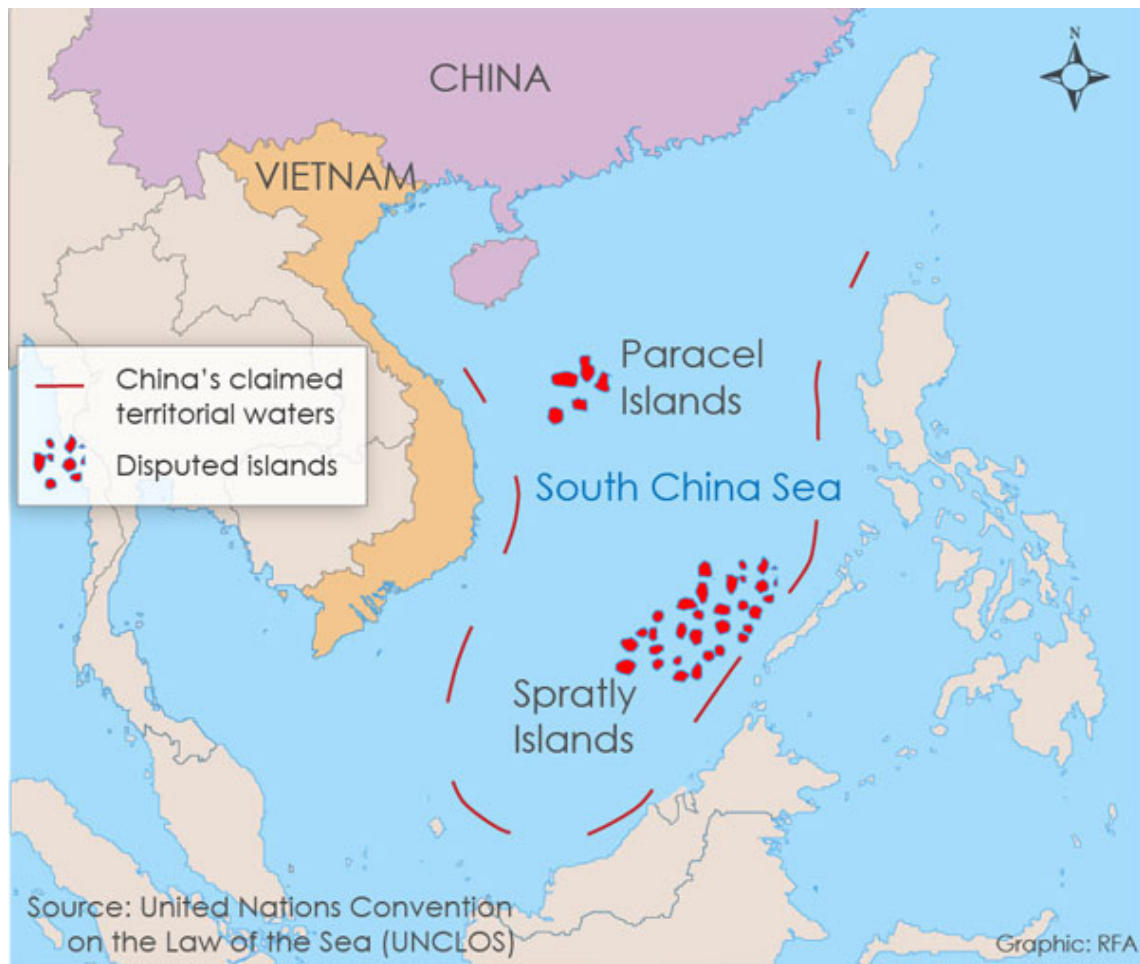


Figure 2. China's Nine-Dash Line in the South China Sea

Source: Parameswaran Ponnudurai, "Vietnam's Leader Rubbishes Beijing's South China Sea Claims," Radio Free Asia, 25 July 2013, <http://www.rfa.org/english/news/vietnam/sea-07252013220917.html> (accessed 29 June 2013).

Economically, the South China Sea is a very important maritime common of the area. It is the world's second busiest sea lane; more than half of the world's supertankers travel through the sea.⁶ It functions as the throat of the Western Pacific and Indian Oceans—the mass of economic tissue where global sea routes coalesce, accounting for \$5.3 trillion in trade, of which \$1.2 trillion is annual U.S. trade.⁷ The South China Sea is

believed to be rich in natural sources such as oil, gas, and other mineral resources. It is estimated to contain 11 billion barrels of oil and 190 trillion cubic feet of natural gas.⁸ For each of the claimant countries, the South China Sea is also their largest source of fish with the amount of fishery caught steadily increasing annually.⁹

The South China Sea is also a region of severe territorial disputes among its surrounding nations. Over the past decades, six claimants, namely, China, Taiwan, Vietnam, the Philippines, Malaysia, and Brunei all have made competing claims to islands, maritime and seabed jurisdictions. The overlapping claims and the assertiveness in sovereignty of these countries, particularly of China, Vietnam, and the Philippines, cause tensions, making the South China Sea a regional flashpoint.

The Complexity of the Disputes

The two main disputed archipelagos are the Paracel and Spratly Islands. The Paracels is claimed entirely, as their indisputable territory, by China, Taiwan and Vietnam. China bases its claim on the ancient Chinese objects dating from the Tang and Song dynasty found on the islands and the historical occupation of fishermen operating from Hainan in nineteenth and twentieth centuries. In 1902 and 1908 the Qing Dynasty sent expeditions to the Islands, hoisting the Chinese flag, and the Guangdong government officially stated the island group to be under Chinese sovereignty. In December 1946, Chinese Nationalist naval forces established a garrison on Woody Island, the largest of the Paracels, but left in 1950. In 1974, Chinese military forces attacked and ousted the Vietnamese forces from Crescent Group, claiming all of the islands. On the other hand, Vietnam constantly confirms its sovereignty over the Paracels by historical evidence and legal basis. Several ancient geographic books, maps and historical documents indicate

that the Vietnamese have occupied and exercised their sovereignty over the archipelago in a continuous and peaceful manner. In 1816, Nguyen Emperor Gia Long officially claimed the Paracels, and the following Emperor Minh Mang sent troops to set up a marker, built a pagoda, planted trees and mapped the islands. The French protectorate Annam revived the Nguyen's Dynasty claim in 1931, and permanently occupied the islands from then to 1945. The Franco-Vietnamese troops returned to the archipelago in 1947, and rebuilt their meteorological and radio stations there. At the San Francisco Peace Conference in 1950, the head of the State of Viet Nam's delegation declared that the Paracel and the Spratly Islands have long been the territories of Viet Nam, and that "to take full advantage of every chance to prevent any seed of dispute in the future, we affirm our long-standing sovereignty over the Paracel and the Spratly Islands."¹⁰ This statement did not meet any objections and/or reservations. Then, the government of the Republic of Vietnam exercised the sovereignty over the Paracels until it was illegally ousted by the Chinese forces. However, Vietnam has consistently upheld its claim to the archipelago through law and a number of official statements.

The sovereignty dispute over the Spratly Islands is much more complicated because of its multinational nature. China, Taiwan, and Vietnam claim the archipelago entirely, while Malaysia, the Philippines and Brunei claim only part.

China, along with Taiwan, bases its assertion of sovereignty over the islands on historical surveying expedition, fishery activities, and naval patrols since the fifteenth century.¹¹ China even confirms that it has historical evidence of Chinese traders and fishermen passing by or landing on the islets and atolls of these two archipelagos since the Yuan Dynasty (1271 to 1368). In 1947, the pre-1949 Republic of China government

issued maps with an eleven-dash line that includes most of the sea and all of the islands within those lines. This eleven-dash line was revised to nine-dash line by Zhou Enlai, and China has used it to assert its sovereignty in the region. Noticeably, all of the Paracel and Spratly Islands have been repeatedly confirmed by Beijing as its indisputable sovereignty.

Vietnam claims sovereignty over the islands based on its historical background and the continental shelf principles in accordance with the provisions of United Nations Convention on Law of the Sea (UNCLOS). Vietnam also confirms its claim by exercising rights of succession from the French colonial regime. Vietnamese troops are stationed in 27 features, and ordinary people live in several of those.

The Philippines claims its sovereignty over 53 features (occupies eight islets) of the Spratly Islands, based principally on discovery of certain islands (Kalayaan or Freedomland) by Thomas Cloma in 1947.¹² In May 1956, Cloma claimed these islands for the Philippines. In June 1978, President Marcos issued a Presidential Decree number 1596, which defined the coordinates of the Kalayaan and declared that it was “subject to the sovereignty of the Philippines.”¹³

Malaysia claims sovereignty over 12 islands (occupies five) in the Spratly Islands, based on terms of international laws, in particular the 1982 UNCLOS.¹⁴ However, while the provisions on continental shelf of UNCLOS support its claims to seabed resources, they do not uphold assertions to sovereignty over islands that are permanently above sea level.¹⁵

Brunei claims sovereignty over only two features of the Spratly, known as Louisa Reef and Rifleman Bank, also based on the continental shelf provisions in the

1982 UNCLOS. The features are submerged, so settlement there is impossible. Granting that, Brunei is the only claimant that does not have a military presence in the Spratly Islands.

The Approaches of the Disputed Claimants

China: As the single most powerful disputed claimant, China's behavior set the tone of the dispute.¹⁶ In recent years, its assertiveness has intensified, leading to tensions between China and other claimants, particularly Vietnam and the Philippines. Several important elements of China's approach to the disputes in the South China Sea include: China uses the map of nine-dashed lines to identify their maritime territorial claims. It argues that its claims in the South China Sea have historical routes for hundreds of years. In parallel, China repeatedly stresses that it has indisputable rights over, and interests in, the Paracels and Spratly Islands and their surrounding waters. Although China states that it wants to address its maritime territorial disputes peacefully, it has shown no indications of readiness to back down or compromise on its claim.¹⁷ China prefers bilateral talks to solve the disputes rather than multilateral approaches. That way of behavior is believed to give it a much higher position in negotiation since it is larger and much more powerful than other individual South China Sea claimants. Furthermore, China has stepped up its harassment and even disruption of foreign vessels that carry out seismic survey, oil exploration and fishery activities, not even in contested areas but also deeply within other claimants' Exclusive Economic Zone (EEZ) in the South China Sea. Moreover, China is concerned about the United States (U.S.) involvement in the South China Sea, regarding the U.S. pivot to Asia as emboldening ASEAN claimant states, especially the Philippines

and Vietnam.¹⁸ Recently, China agreed to hold “official consultations” on a proposed CoC, governing naval actions at a meeting with ASEAN in China in September 2013.¹⁹

Vietnam has repeatedly stated that it has indisputable sovereignty over the Paracel and Spratly archipelagos, and that it has a variety of historical evidence to support that claim. In parallel, Vietnam also opposes China’s claim of the whole South China Sea and its assertive actions that cause tension in the region. Vietnam’s consistent policy of settling disputes in the South China Sea is in accordance to international law, including the 1982 UNCLOS. Vietnam manages to hold bilateral discussions with China on matters that do not affect third parties, like the waters at the mouth of the Gulf of Tonkin and the Paracel Islands. Meanwhile, Vietnam also states that issues that are related to other countries and parties like the Spratly Islands cannot be settled by Vietnam and China; they require the participation of other concerned parties. For issues that are not only related to countries that border the Eastern Sea (South China Sea) such as maritime safety and security, they must be negotiated and settled by all countries that share this common interest.²⁰ Aiming at defusing tensions and figuring out a long-term practical solution with China, Vietnam is active in cooperating with other ASEAN nations and China to reach agreement for a South China Sea CoC. Fostered by economic growth, Vietnam recently has accelerated its military modernization program, prioritizing the acquisition of naval and air assets. Vietnam has ordered six Project-636 Kilo-class submarines, eight Su-30 multi-role fighters and several corvettes, anti-ship missiles systems from Russia, and is said to be interested in acquiring the United States Lockheed Martin P-3 Orion marine patrol aircraft.²¹ The main purpose of this modernization program is said to be defense of its fatherland, and not to attack any other parties.

The Philippine and China relations have been worsening due to recent tensions between the two countries over the disputed areas in the South China Sea, particularly after the Scarborough Shoal incident in 2012. The two-month standoff began on 8 April 2012 when one flagship of the Philippines Navy attempted to arrest the Chinese fishermen on eight Chinese vessels which were believed to illegally collect corals, giant clams and live sharks in the region, but was blocked by Chinese Maritime Surveillance ships. Recognizing its weak stand over the military power in comparison with China, the Philippines has fostered diplomatic and military relations with other members of the ASEAN and world powers like the U.S., India, and Japan. In January 2013, the Philippines said it would take China to an arbitration tribunal under the UNCLOS, signed by both countries in 1982.²² On 27 June 2013, Philippine Defense Secretary Voltaire Gazmin said that its government was crafting an agreement with the U.S. giving the U.S. military access to Subic Bay. On 27 June 2013 the Philippines and U.S. naval forces began a one-week joint exercise, codenamed Cooperation Afloat Readiness and Training, near Scarborough Shoal. Furthermore, the Philippines–Japan security cooperation has also been accelerated, marking by the announcement of Japan to donate 10 brand new patrol ships to the Philippine Coast Guard in February 2013.²³

Malaysia and Brunei, the two other ASEAN claimants in the South China Sea, tend to attach greater importance in their relations with China, since they have not been directly intimidated by the Chinese. The exception was in 2009, when Malaysia and Vietnam made a joint submission to extend their continental shelves beyond 200 nautical miles, which is argued as the legitimate implementation of its obligation under the Law of the Sea Convention.

Purpose

Despite the limitation and temporary separation within the ASEAN toward a CoC for the South China Sea, the author still believes that ASEAN can play a positive role in addressing this problem. Therefore, the research will examine attempts so far of ASEAN as a unified stakeholder in negotiating with China; The issues that unify and separate ASEAN over the disputes, and the ASEAN's efforts toward a CoC in the South China Sea.

Research Questions

This study will focus on examining ASEAN's role in disputes between China and ASEAN members in the South China Sea. The primary research question is: Can ASEAN address China's claims that conflict with ASEAN claims in the South China Sea? Six secondary research questions are identified to address this issue.

The first sub-question is: What is ASEAN and what are its norms for addressing regional security issues? This question will examine the foundation and evolution of ASEAN and how it has involved international partners to balance other powers and maintain peace, stability and security in the region.

The second sub-question is: What are the disputes between China and ASEAN claimants in the South China Sea? Understanding the nature of historic disputes and the arguments of each claimant is particularly important for this thesis as it uses this information to analyze the situation and make recommendations for ASEAN and its member nations to seek a sustainable solution over the South China Sea disputes. The question will examine the disputes over the Spratly Islands, the Paracel Islands, and the nine-dashed line that China uses to claim its territory in the South China Sea.

The third sub-question is: How have China and ASEAN claimants approached the disputes? The answer for this question will help to explain why China has always addressed the dispute bilaterally, while ASEAN claimants tend to seek a multilateral solution for the problem, based on international negotiations and the UNCLOS.

The fourth sub question is: What has China done to block ASEAN from reaching unified position towards the South China Sea disputes? It will examine how China has influenced several ASEAN member states to split up ASEAN and prevent it from reaching consensus over the disputes.

The fifth sub-question is: How has ASEAN been involved in South China Sea disputes so far? This question will examine the involvement of ASEAN so far, focusing on its efforts to reduce tensions by getting all claimants involved in implementing the Declaration on the Conduct (DoC) of Parties in the South China Sea, and to look for a longer and more sustainable solution via the agreement on a CoC in the South China Sea.

The final sub-question is: What are ASEAN interests and responsibilities in the South China Sea? The answer for this question will explain why ASEAN should play the key role in consulting and negotiating with China to seek a long-term solution over the disputes.

Significance

In a time when tension in South China Sea is ever escalating and potentially triggers armed conflict, as China becomes more assertive and ambitious over sovereignty claims, this research will be a significant endeavor in understanding how ASEAN as a block will approach solving the South China Sea dispute. It also helps the ASEAN claimants to be more aware of the strengths and limitations of ASEAN in a united effort

to address this key regional security issue, so that they can map out suitable policies in relations with China to meet their desired end state of peacefully solving the contest based on the International Law of the Sea and the UNCLOS. The research will serve as a reference for addressing other maritime territorial disputes in the world, particularly the disputes over the Arctic between its neighboring nations. Moreover, it will serve as a beneficial resource for follow on studies on China, the ASEAN and the South China Sea.

Assumptions

This thesis will use the four following assumptions that are necessary for the flow of the research. First, in the next several years, there will be no events or actions that are substantially different than ongoing tensions and incidents in the South China Sea. Second, there will be no significant shifts in policies of the key players, including the disputed claimants and involving powers such as the U.S. and Japan. Third, ASEAN, especially Vietnam and Philippines, continues to seek a consolidated approach to address the problem with its giant neighbor China. Last but not least, the UN, UNCLOS, and other Inter-Governmental Organizations cannot help to find the key or effective resolution of the disputes, since China continues to oppose any attempts to internationalize the disputes.

Limitations

While there are a number of other internal security issues that ASEAN needs to address, this case will be limited to the ASEAN approaches to ease tensions in, and find out a long-term stable solution for the South China Sea with China. The case will also not look into any other maritime territorial disputes between China and non-ASEAN states

like Japan and Taiwan, even though these disputes are also potentially threatening the regional stability and security. While within the ASEAN's South China Sea claimants there are overlapping claims, the case will not analyze them, since it seems that all ASEAN claimants set aside their differences and manage a joint effort with ASEAN as their foundation to negotiate with China. The application of UNCLOS and International Law of the Sea to the case of South China Sea will not be a part of the study, since they mainly help to solve bilateral disputes, and China has not accepted any resolutions based on them.

Conclusion

This chapter has given an overview of ASEAN, the South China Sea and the disputes between its neighboring countries. It has also looked into the ASEAN as a regional organization and the approaches to the disputes of China and ASEAN claimants, mainly Vietnam and the Philippines. As a regional security architecture, what ASEAN has done to solve its regional security issues in general, and the South China Sea disputes in particular, is limited. Therefore, this thesis will examine China and ASEAN relations as well as issues that unify and those that diverge ASEAN. It continues by looking at ASEAN efforts in reaching a long-term solution with China over the South China Sea disputes.

¹Association of Southeast Asian Nations, "The Founding of ASEAN," ASEAN Secretariat, <http://www.aseansec.org/the-founding-of-asean/> (accessed 2 May 2013).

²Association of Southeast Asian Nations, "About ASEAN," ASEAN Secretariat, <http://www.asean.org/asean/about-asean> (accessed 2 May 2013).

³Ibid.

⁴H. E. Le Luong Minh, “ASEAN Day Message,” ASEAN Secretariat, 8 August 2013, <http://www.asean.org/news/asean-secretariat-news/item/message-on-asean-day-2013-by-he-le-luong-minh-secretary-general-of-asean> (accessed 17 August 2013).

⁵Christophe C. Joyner, “The Spratly Islands Dispute in the South China Sea: Problems, Policies, and Prospects for Diplomatic Accommodation,” in Report No. 28, *Investigating Confidence Building Measures on the Asia Pacific Region*, ed. Ranjeet Singh (Washington, DC: Henry L. Stimson Center, 1999), <http://www.stimson.org/images/uploads/research-pdfs/cbmapspratly.pdf> (accessed 2 May 2013).

⁶GlobalSecurity, “South China Sea/Spratly Islands,” <http://www.globalsecurity.org/military/world/war/spratly.htm> (accessed, 6 June 2013).

⁷Office of the Press Secretary, “Press Briefing by NSA for Strategic Communications Ben Rhodes and Admiral Robert Willard, U.S. Pacific Command,” The White House, 13 November 2011, <http://www.whitehouse.gov/the-press-office/2011/11/13/press-briefing-nsa-strategic-communications-ben-rhodes-and-admiral-rober> (accessed 6 June 2013).

⁸U.S. Energy Information Administration, “South China Sea,” 7 February 2013, http://www.eia.gov/countries/analysisbriefs/South_China_Sea/south_china_sea.pdf (accessed 6 June 2013).

⁹National Oceanic and Atmosphere Association, “South China Sea Large Marine Ecosystem,” The Encyclopedia of Earth, 19 August 2011, http://www.eoearth.org/article/South_China_Sea_large_marine_ecosystem?topic=49597 (accessed 6 June 2013).

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¹²Thomas Cloma, an enterprising Filipino businessman and owner of fishing fleet and private maritime training institute, aspired to open a cannery and develop guano deposits in the Spratlys. It was principally for economic reasons, therefore, that he “discovered” and claimed the Kalayaan Islands and established several colonies on them by 1950.

¹³*Ibid.*

¹⁴Joyner.

¹⁵*Ibid.*

¹⁶Clive Schofield and Ian Storey, “The South China Sea Dispute: Increasing Stakes and Raising Tensions,” James Foundation, Academia.edu, 2009, http://www.academia.edu/2062121/The_South_China_Sea_Dispute_Rising_Tensions_Increasing_Stakes (accessed 5 April 2013).

¹⁷Ronald O’Rourke, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress* (Washington, DC: Congressional Research Service, 15 August 2013), <http://www.fas.org/sgp/crs/row/R42784.pdf> (accessed 27 September 2013).

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²⁰Carlyle A. Thayer, “Security Cooperation in the South China Sea: An Assessment of Recent Trends,” Scribd, <http://www.scribd.com/doc/59499260/Thayer-Security-Cooperation-in-the-South-China-Sea-An-Assessment-of-Recent-Trends> (accessed 7 May 2013), 4.

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CHAPTER 2

LITERATURE REVIEW

In order to have a detailed analysis of the dispute and what role ASEAN should and could play in the South China Sea disputes, it is necessary to examine several works of literature, reports, and articles relating to the purpose of this thesis. The review will begin with documents about the South China Sea and its disputes, and China's and ASEAN claimants' policies and actions in these contested waters. The examination of literature of international relation theory with several predominant paradigms namely realism, liberalism and constructivism and their relevance to policies of ASEAN claimants and ASEAN as the regional organization will help in understanding on which foundations the claimant states and ASEAN base their policies and approaches in the disputes. The review will conclude with books and articles examining the ASEAN's security architecture, things that unite or divide ASEAN, and ASEAN's approaches to diffuse tensions in the South China Sea to this point, as well as what it could and should do to enhance its position in discussing the issue with China.

South China Sea Disputes

In "The Spratly Islands Dispute: Who's on First?" Daniel J. Dzurek¹ draws out the detail physical geography of features and location of the Spratly Islands. The author goes further by describing the history of the claims in several time periods, including before the twentieth century, early twentieth century, in the aftermath of World War II, the San Francisco Peace Treaty in 1951, the oil rush from 1958 to 1987, and the Battle of Ferry Cross Reef in 1988. According to the briefing, before the twentieth century, only

China and Vietnam have proof of presence and occupation on the islands. China claims discovery and intermittent presence from Han dynasty (second century BC).² Its presence there increased during the Ming dynasty when Chinese navigators were among the first to reach the islands. However, not all artifacts and graves that China uses as the evidence of its claim persuade modern authors about its title to the islands. Meanwhile, Vietnam reaffirms that it has maintained effective occupation of the two archipelagos since at least the seventeenth century when they were not under the sovereignty of any other country.³ Vietnam consolidated its occupation and sovereignty over the Paracel Islands during the French colonial time. Since the San Francisco Peace Treaty in 1951, Vietnam has reaffirmed its sovereignty over both the Paracel and Spratly Islands. The author also examines the claims and occupations of other ASEAN claimants over other features in the South China Sea.

In “The South China Sea Dispute: Increasing Stakes and Rising Tensions,” Clieve Schofield and Ian Storey⁴ provide an overview of the geographic nature of the South China Sea and its importance to the region and the world. According to the authors, the South China Sea is home to key sea lines of communication, linking the Indian and Pacific Oceans, and therefore is crucial to regional and global commerce and energy. Besides being a proven and significant source of maritime life of utmost importance to human and food security in the region, the South China Sea is also a potential source of energy resources crucial to the economic development of its neighboring nations. The article points out that China’s more assertive stance in the South China Sea is due to a number of factors, including its hunger for energy resources, anxieties over oil supply and sea lines of communication security, the approaches of the other claimants and the

rising nationalism.⁵ It argues that China is the only party to the South China Sea dispute that staunchly and inflexibly clings to allegedly “indisputable” sovereignty, and its historical claims are incompatible with the current international legal norms.⁶ However, it is also the ASEAN claimants’ recent approaches that heighten tensions, including the joint submission of Malaysia and Vietnam to the United Nations Commission on the Limits of the Continental Shelf in 2009.

Ben Dolven, Shirley A. Kan, and Mark E. Manyin, in *Maritime Territorial Disputes in East Asia: Issues for Congress*,⁷ update the contested situation in the South China Sea. He asserts that the dispute is particularly problematic since it involves six separate claimants, and it has become more complicated over the last several decades by frequently aggressive behavior by rival claimants.⁸ The report traces actions of each claimant state, particularly China, in 2012 in order to assert its claims, such as China’s announcement of upgrading the administrative level of Sansha, a city located on an island in the disputed Paracels. In the case of the Philippines, the author argues that in 2012 Manila explored several means of resolving disputes, including offering China an opportunity to take their dispute over Scarborough Shoal to the International Tribunal for the Law of the Sea.⁹ The report also mentions the approval of the Maritime Law by Vietnam National Assembly, which formally laid out its claims to the Paracel and Spratly Islands. The author argues that it is China’s emergence as a more powerful and assertive actor that causes the escalating tensions in the region.¹⁰ China also increases the number of fishing boats and official paramilitary or law-enforcement patrol ships to the region as a strategy to assert its jurisdiction. Another Chinese strategy that the author also points out in this paper is Beijing’s implicit effort to maintain the status quo while strengthening

actual control of the waters surrounding disputed reefs and islands, like the case of Scarborough Shoal when it retained physical control while negotiating a de-escalation with the Philippines.¹¹

For ASEAN, the report argues that its lack of unity has made it an unwieldy place to discuss the South China Sea issues. The peak of this separation was in July 2012, when ASEAN's foreign ministers failed to get a communiqué in their meeting in Phnom Penh because of disagreements over whether specific mention should be made of South China Sea incidents. The report concludes by mentioning several solutions that the U.S. should consider in its effort to ease tensions in the South China Sea, including the multilateral diplomatic approaches and the application of UNCLOS.

In "Maritime Security in the South China Sea and the Competition over Maritime Right," M. Taylor Fravel¹² argues that the competition for maritime rights in the South China Sea has emerged as the most important security issue in East Asia. This competition is more important than any other security issues, and focused mainly on the claims to territorial sovereignty over islands and reefs. He focuses on China's commercial activity and civil maritime law enforcement in the last several years that has resulted in a number of confrontations at sea, such as the detaining of Vietnamese fishing boats between 2009 and 2011, and the challenges and disruption of maritime seismic survey activities by Vietnam and the Philippines in 2011. The author goes further by discussing China's efforts to moderate its approach based on Deng Xiaoping's guideline of "sovereignty is ours, set aside disputes, pursue joint development."¹³ His most important contribution lies in suggesting several potential areas of cooperation over maritime rights in the disputed waters, focusing on the joint regulation of fishing, joint

civil maritime law enforcement activities, joint development of petroleum resources, and joint naval patrols. The combination of these endeavors would help to reduce confrontation and consolidate regional stability.

The obstacles that prevent ASEAN and China from reaching a long-term peaceful solution for the South China Sea disputes are examined in David Scott's "Conflict Irresolution in the South China Sea."¹⁴ The author argues that it is the combination of a lack of any willingness to settle disputes by mutual concession on the part of the claimant states and their unwillingness or inability to attempt any method of conflict resolution that cause the current tensions.¹⁵ On one hand, China is still reluctant to give ASEAN any significant role in settling the South China Sea issue, saying that it is not an issue between China and ASEAN. On the other hand, Vietnam and the Philippines emphasize the center role of ASEAN and seek multilateral dialogue to address the disputes. The author then examines ASEAN's role in diffusing tensions with the argument that the ASEAN's role so far has mainly been conflict management rather than conflict solution. It would be unrealistic to expect ASEAN-led or ASEAN-facilitated sovereignty negotiation, since the organization lacks supranational powers and foreign policy jurisdiction competency.¹⁶ However, the author suggests that ASEAN should involve China in joint exploration and exploitation agreements. By doing this, economic interdependence would be more important than the issue of sovereignty claims.

Cooley Brendan, in "A Sea Change or a Wave of Backlash? The South China Sea and Changing Power Dynamics in Southeast Asia,"¹⁷ stresses the ASEAN states' interest in the outcome of the conflict in the South China Sea. Two major claimants (Vietnam and the Philippines) have tangible interest in consolidating their claims on Paracel and Spratly

island groups and economic benefits from their surrounding waters. All other states are also watching the disputes closely, since they are all concerned about the rising Chinese power in the region.¹⁸ The author identifies that most of Southeast Asian states have pursued a hedging strategy, in which they simultaneously attempt to strengthen relations with multiple powers. The article also examines the interests of several actors in the South China Sea, focusing on the rivalry between China and the U.S. It argues that although ASEAN members have divergent interests and status of disputed claims in the South China Sea, China's aggressive action once united the region when China occupied Mischief Reef in 1994. For the future, the author insists that the way ASEAN could limit Chinese influence is by pursuing collective strength and commitment of diplomatic, economic, and military support from outside players.¹⁹

In "Sovereignty Disputes in the South China Sea: Diplomacy, Legal Regimes, and Realpolitik," Carlyle A. Thayer²⁰ puts China at the center of all major maritime security challenges in Southeast Asia. He examines the political interactions between China, Vietnam, the Philippines, and ASEAN over the disputes in the South China Sea. He explains the reasons that lead to rising tensions in those disputed waters, and highlights the ASEAN efforts to implement the DoC and to work out a CoC. However, the author argues that DoC could not address the security challenges posed by Chinese assertiveness and the ASEAN community goals. The important point that the author highlights in this research is the ineffectiveness of the ASEAN-centered institutions, like the ASEAN Regional Forum (ARF) and ASEAN Defense Ministers' Meeting (ADMM) in addressing the link between legal regimes and *realpolitik* in fashioning a durable solution.²¹ He concludes that it is China's aggressiveness that is pushing regional states closer to the

U.S. in order to balance powers, and this tendency would result in the transmission of great power rivalry into Southeast Asia and deteriorate the region's autonomy as well as the ASEAN centrality in the regional security architecture.²²

Theoretical Perspective on International Relations in the South China Sea Disputes

The main purpose of this section is to provide a common understanding of several main paradigms of the International Relations theory. This will help in examining the policies and approaches toward the disputes of claimant states and the foundations for ASEAN unity as it is the key to exploring what ASEAN has done and could do to solve its internal and external security issues in general and the South China Sea disputes in particular. In this regard, perhaps the most challenging thing is that there is no academic model in the Western International Relations Theory that would really be relevant to the entire association, since it composes not only small but also medium-sized countries. However, by examining the three main International Relations paradigms, namely Realism, Liberalism, and Constructivism observers can view China, ASEAN, and the South China Sea claimants' policies and approaches from a distinctive perspective.

Realism

For the last several decades, realism has dominated the study of international relations, particularly after the Cold War, because it provides simple but powerful explanations for war, alliances, imperialism, obstacles to cooperation, and other international phenomena.²³ According to realistic theory, states are sovereign, and they are key actors in the international politics and guided by consideration of power and national interest. They are also the highest institutions, and are independent and

autonomous from other states.²⁴ There is no international order, so a state has to defend itself from being occupied or dominated by other states. Realists state that the distribution of power is the most important variable explaining nation-state behavior, and the best way of managing conflict in the system is by balancing power with power.

Realism argues that a state can influence others by summing up its national potential, including the population, territory, economic capabilities, military strength, political will, nationalism and so on. Accordingly, a state with the advantages of these factors will be a major power. It may do whatever it can to support its national interests with little consideration to other smaller states' reactions and interests. Realists also contend that when a state experiences another state trying to strengthen its offensive capabilities, it feels worried and threatened.²⁵ As a result, it will maximize all its available options, including deferring, building up itself defense capabilities, and allying with other states to form a defensive coalition.²⁶ In application to the South China Sea disputes, realism is best for examining China's strategies and policy toward the disputes and actions in the South China Sea. Realism is also relevant in analyzing other claimants' responses when they manage to defer, ally and build up their own defensive capabilities.

Liberalism

Liberalism tends to concentrate on the impact of interdependence, the advantages of free trade, collective security and the existence of a harmonious relation between states for their own benefits.²⁷ Liberalism also considers the expansion of democracy as the main factor in world peace, based on the claim that democratic states were inherently more peaceful than authoritarian states.²⁸ According to liberalism, states are the center of

international order, economic interdependence can lower the likelihood of a war, and interstate behavior is mainly shaped by the pattern of state preferences, not state power.

Liberalism can be seen as the basis of ASEAN's actions. The members have worked on improving relationships with external powers and getting them involved in a number of regional affairs. These actions benefit both of them or ASEAN and could not be achieved by ASEAN alone. The DoC of Parties in the South China Sea was also considered as an approach for addressing the issue and re-focus on economic cooperation. Hence, only two days after that, ASEAN and China signed an agreement on a free trade area.

Another variant of liberalism is neoliberalism, which challenges the realism's concept of anarchy and confirms that a state is not the only actor in international affairs. It explains the durability of institutions despite significant changes in context, stresses the role of international systems and the ability of international organizations in getting states to cooperate.²⁹ Neoliberals see institutions as the mediator and the means to achieve coordination in international systems. They believe that states and other actors can be persuaded to cooperate if they are convinced that all states will comply with rules and cooperation will result in absolute gains.

In this thesis, neo-liberalism will be the main source for examining ASEAN's efforts to build consensus among all its member states. Neo-liberalism will also be used to analyze what ASEAN has done so far to defuse tensions in the South China Sea and persuade all claimants to participate in discussions to look for a sustainable solution for the issue.

Constructivism

In contradiction to realism and liberalism, which are in favor of material factors such as power, states or trade, constructivism stresses the impact of ideas.³⁰

Constructivists argue that there is no “nature” to international anarchy, and it is the result of an implementation that shapes the rules or norms, which guides the relations among states. The character of international relations is defined by the beliefs and expectations that states have of each other. If states behave aggressively toward one another, then it appears that the nature of international anarchy is conflictual. If states cooperate, then it appears that the nature of international anarchy is cooperative.³¹ For constructivists, international institutions play an important role on the behavior of states. They do not only adjust state behavior but also constitute state identities. Through interaction and socialization, states may grow a collective identity, which allows them to overcome power politics and the security dilemma.³² Constructivism can be used to explain the foundation and development of ASEAN since its establishment in 1967.

ASEAN, China and the South China Sea Disputes

Before one can look at what ASEAN could and should do to solve its security problems, it is important to have a background understanding of the association and its development. The ASEAN was founded on 8 August 1967 in Bangkok, Thailand, marked by the signing of ASEAN Declaration (Bankok Declaration) by the foreign ministers of the five founding nations, namely Indonesia, Malaysia, Philippines, Singapore, and Thailand. Since then, it has been the key factor in promoting peace, stability and security in the region. The ASEAN norms of the principles of mutual respect for sovereignty and territorial integrity, consensus, non-interference in the internal affairs of one another,

have been successfully applied to consolidate regional integrity and foster cooperation. The following literature will examine the opportunities and challenges it is facing, and its capability and weakness in solving regional security issues, particularly the South China Sea disputes.

Acharya Amitav, in *Constructing a Security Community in Southeast Asia*,³³ offers a serious investigation into the ASEAN role in regional order and the obstacles to it. According to the author, since its foundation, ASEAN has emerged as one of the world's most successful and developing regional organizations. It is the concept of a security community that has helped ASEAN survive and develop throughout decades with a variety of challenges and obstacles. The author goes further by examining the ASEAN norms in both legal-rational aspects such as the non-use of force, non-interference, regional autonomy and avoidance of military pacts; and social-cultural aspects such as consultations and consensus, and a preference for informality over legalistic mechanisms, which are the core elements of the ASEAN Way,³⁴ which is considered as the foundation to understanding the ASEAN's dispute settlement mechanism, collective action and identity formation. The ASEAN Way is also a factor in constraining the use of force and accelerating a habit of war avoidance. For the mechanism of ARF, the author believes that it could be a useful tool of regional order, and help to balance power by providing norms of restraint and avenues of confidence building among major powers.³⁵ However, the author also warns of the risk of managing ARF that could foster intra-ASEAN differences over political and security issues, which is particularly important in view of the related risk of ASEAN's management of the

South China Sea dispute, as it would test the ASEAN members' ability to put up a collective position *vis-à-vis* China.³⁶

David Scott, in "Conflict Irresolution in the South China Sea,"³⁷ provides consideration for international, regional, and bilateral settings. He argues that the international setting has been largely blocked since China is a veto-wielding permanent member of the United Nations Security Council. Moreover, China has repeatedly opposed attempts to internationalize the South China Sea issue, and called for it to be resolved solve bilaterally. The article then looks at the regional level setting with initial Track-two (non-governmental) discussions feeding into Track-one (intergovernmental) diplomacy at the ASEAN and ASEAN-China level.³⁸ The author analyzes different approaches of the ASEAN aiming at reaching an agreement for the disputes. However, he opines that it might be unrealistic to expect ASEAN-led sovereignty negotiation, given ASEAN's lack of supranational powers and lack of foreign policy jurisdiction competency.³⁹ At the bilateral level, the article traces the cases of Vietnam-China and the Philippines-China relations regarding their policies and back-and-forth actions toward the territorial assertiveness in the South China Sea. The author continues by examining China's behaviors as the central player in the South China Sea conflict,⁴⁰ including its series of actions to consolidate its power and presence in the South China Sea. The article ends by suggesting some options and solutions that ASEAN and its member states should take to get China's involvement in their efforts to solve the sovereignty dilemma.

In the book *ASEAN-China Relations: Realities and Prospects*, edited by Saw Swee-Hock, Sheng Lijun, and Chin Kin Wah,⁴¹ the authors examine the cooperation between ASEAN and China in key aspects of economic integration and regional security.

Although the book highlights the efforts made by two sides and the significant achievements of those efforts, it also shows that the security relations between ASEAN and China are still extremely complicated due to the regional involvement of other major external powers, namely the U.S., Japan, and India, and the feeling of uncertainty when China gradually imposes more and more influence in the region. Therefore, one of the main issues that the authors discuss in the book is: How is the region going to cope with a rising China? The tensions in the South China Sea are also a major part of the book. The authors argue that the bilateral confidence building measures still fall short in preventing unilateral activities from taking place. Despite the huge bilateral efforts that have been made by both China and ASEAN, the progress has been slow. The ASEAN claimants have been unable to seek a common approach in dealing with China.⁴² The authors believe that cooperative approaches to the management of the South China Sea and its resources would be the key to defusing tensions. However, things should be done with patience and persistence in order to achieve sustainable solutions.

The major trends shaping ASEAN's security environment in the next several years and ASEAN security patterns are examined in Carlyle A Thayer's paper "Southeast Asia Patterns of Security Cooperation."⁴³ According to the author, there are at least eight major trends shaping the security environment, and two of those trends are the Chinese military modernization and the heightened importance of the maritime domain. The paper then analyzes the range of security cooperation in Southeast Asia from non-ASEAN multilateral cooperation with the Five Power Defense Arrangements as the dominant pattern, to U.S. theater security operations, China and multilateral security cooperation, and ASEAN-centered security cooperation. The author argues that it is the security

tensions that foster cooperation among regional states, and between them and external powers. However, the weakness of individual states limits their capacity to participate multilaterally to address regional security challenges.⁴⁴ At this moment, when China and the U.S. are competing to shape the regional security environment in favor of their strategic interests, ASEAN has been unable to insulate itself from Sino-American strategic rivalry.⁴⁵

Thayer also digs further into the internal ASEAN differences in his paper “ASEAN’s Code of Conduct in the South China Sea: A Litmus Test for Community-Building?”⁴⁶ In this analysis, the author looks at the ASEAN’s fragmentation by examining the evolution of what was going on during the 45th AMM and its related meetings in Phnom Penh from 8-13 July 2012. For the first time in ASEAN history, they failed to issue a joint communique. On one hand, the paper discovers the differences among ASEAN members on a regional issue of South China Sea disputes, when the participants could not agree on words and content of this portion of the draft joint communique. The author argues that this failure was the result of Cambodia’s handling of its role as ASEAN Chair and the Chinese influence in pushing Cambodia to play an obstructionist role.⁴⁷ On the other hand, it also shows efforts made by almost all ASEAN foreign ministers attended the AMM Retreat in order to get a common agreement from the whole organization over the words and contents of the draft document. The paper then highlights the Indonesian Foreign Minister’s determined attempts to heal the frictions among ASEAN members by conducting the shuttle diplomacy to gain unanimous agreement on ASEAN’s Six-Point Principles on the South China Sea. It concludes by confirming that China’s influence in ASEAN’s decisions related to the

South China Sea must be taken in to account by ASEAN, particularly in the discussion process on the CoC.

In his paper “ASEAN and the Disputes in the South China Sea,” Ha Anh Tuan⁴⁸ focuses on the role of ASEAN as a key factor in the peace and security of the South China Sea. He first examines the history of ASEAN’s position and practical engagement in the disputes. Then he discovers ASEAN’s strategic position to engage a long-term commitment at the top level to manage tensions. The foundation for this involvement is the founding Bangkok Declaration, which clearly described the desire to establish a firm foundation for common action to promote regional cooperation, and the ASEAN Charter.⁴⁹ The author argues that ASEAN should be proactive in the issue and automatically engage itself to foster a peaceful and cooperative solution for the disputes. The guiding principles and conflict management of ASEAN in solving the South China Sea problem are analyzed based on what was written in ASEAN’s fundamental documents such as the Treaty of Amity and Cooperation, the Declaration of ASEAN Concord II, the Blue Print of the ASEAN Political and Security Community, and the ASEAN Charter. The main contribution of this paper to the thesis is the suggestions of promoting a more influential role for ASEAN in managing conflicts in the South China Sea. According to the paper, ASEAN should serve as a valuable facilitator to strengthen mutual trust among the claimants, but should not turn itself into a party to the disputes. All efforts must be put in a broader context of ASEAN’s centrality in regional multilateral cooperation. ASEAN itself should strengthen its integration through promoting ASEAN institutions and economic connections. Likewise, the Track-two

discussion on the South China Sea should be broadened to have more scholarly international conferences on the issue.

Conclusion

This chapter has reviewed books, reports, and articles that are used as the main sources for this research. It starts with the documents that examine the complexity of the disputes in the South China Sea. It then looks at several main International Relations theories namely Realism, Liberalism, and Constructivism. The chapter concludes with the documents which analyze ASEAN's role, and its strengths and weaknesses in working with China to find a long-term solution for the South China Sea disputes. The next chapter will look more deeply into Realism and Liberalism, because the thesis will use them to analyze the approaches toward the disputes of China, the Philippines, and Vietnam and the efforts of ASEAN in managing tensions in the South China Sea.

¹Daniel J. Dzurek, "The Spratly Island Dispute: Who's on First?," *Maritime Briefing* 2, no. 1 (1996), <http://www.nguyenthaihocfoundation.org/lichsuVN/SpratlyDispute.pdf> (accessed 3 July 2013).

²Ibid., 8.

³Ibid., 9.

⁴Schofield and Storey, The South China Sea Dispute: Increasing Stakes and Rising Tensions, http://www.academia.edu/2062121/The_South_China_Sea_Dispute_Rising_Tensions_Increasing_Stakes (accessed 28 May 2013).

⁵Ibid., 3.

⁶Ibid., 42.

⁷Ben Dolven, Shirley A. Kan, and Mark E. Manyin, *Maritime Territorial Disputes in East Asia: Issues for Congress* (Washington, DC: Congressional Research Service, 2013), <http://www.fas.org/sgp/crs/row/R42930.pdf> (accessed 10 May 2013).

⁸Ibid., 7.

⁹Ibid., 11.

¹⁰Ibid., 23.

¹¹Ibid., 25.

¹²Fravel M. Taylor, "Maritime Security in The South China Sea and the Competition over Maritime Rights," in *Cooperation from Strength: The United States, China and the South China Sea*, ed. Patrick M. Cronin (Washington, DC: Center for New American Security, January 2012).

¹³Ibid., 45.

¹⁴David Scott, "Conflict Irresolution in the South China Sea," *Asian Survey* 52, no. 6 (2012): 1019-1042.

¹⁵Ibid., 1040.

¹⁶Ibid., 1027.

¹⁷Cooley Brendan, "A Sea Change or a Wave of Backlash? The South China Sea and Changing Power Dynamics in Southeast Asia," *Global Security Studies* 3, no. 4 (Fall 2012): 82.

¹⁸Ibid., 79.

¹⁹Ibid., 88.

²⁰Carlyle A. Thayer, "Sovereignty Disputes in the South China Sea: Diplomacy, Legal Regimes, and Realpolitik," Scribd, <http://www.scribd.com/carlthayer> (accessed 29 August 2013).

²¹Ibid., 24.

²²Ibid., 28.

²³Ibid., 31.

²⁴Ibid.

²⁵Ibid., 22.

²⁶Stephen M. Walt, "Alliances: Balancing and Bandwagoning" (The University of Oklahoma), <http://www.ou.edu/uschina/texts/WaltAlliances.pdf> (accessed 17 July 2013).

²⁷Juanita Elias and Peter Sutch. *International Relation: The Basics* (Oxford, UK: Routledge, 2007), 64.

²⁸Stephen M. Walt, “International Relations: One World, Many Theories,” *Foreign Policy* no. 110 (Spring 1998): 32.

²⁹Davitt Rebecca, Liberal Institutionalism: An Alternative IR Theory or Just Maintaining the Status Quo?” e-International Relations, 1 September 2011, <http://www.e-ir.info/2011/09/01/liberal-institutionalism-an-alternative-ir-theory-or-just-maintaining-the-status-quo/> (accessed 26 August 2013), 1.

³⁰Walt, “International Relations: One World, Many Theories,” 40.

³¹Cynthia Weber, *International Relations Theory: A Critical Introduction* (Oxford, UK: Routledge, 2005), 60.

³²Acharya Amitav, *Constructing a Security Community in Southeast Asia* (Oxford, UK: Routledge, 2009), 3.

³³*Ibid.*

³⁴*Ibid.*, 37.

³⁵*Ibid.*, 184.

³⁶*Ibid.*

³⁷Scott David, “Conflict Irresolution in the South China Sea,” *Asian Survey* 52, no. 6 (2012).

³⁸*Ibid.*, 1023.

³⁹*Ibid.*, 1027.

⁴⁰*Ibid.*, 1034.

⁴¹Saw Swee-Hock and Lejun Sheng, *ASEAN-China Relations: Realities and Prospects* (Pasir Panjang, Singapore: Institute of Southeast Asian Studies, 2006).

⁴²*Ibid.*, 16.

⁴³Carlyle A. Thayer, “Southeast Asia Patterns of Security Cooperation,” Australian Strategic Policy Institute, 30 September, 2010, http://www.aspi.org.au/publications/publication_details.aspx?ContentID=268 (accessed 15 May 2013).

⁴⁴*Ibid.*, 3.

⁴⁵*Ibid.*

⁴⁶Carlyle A. Thayer, “ASEAN’s Code of Conduct in the South China Sea: A Litmus Test for Community-Building?” Japan Focus, http://www.japanfocus.org/-Carlyle_A_-Thayer/3813 (accessed 5 August 2013).

⁴⁷Ibid.

⁴⁸Ha Anh Tuan, “ASEAN and the Disputes in the South China Sea” (Program for East Sea (South China Sea) Studies, 8 December 2011), <http://nghiencuubiendong.vn/en/conferences-and-seminars-/the-third-international-workshop-on-south-china-sea/635-asean-and-the-disputes-in-the-south-china-sea-by-ha-anh-tuan> (accessed 2 September 2013).

⁴⁹Ibid., 5.

CHAPTER 3

RESEARCH METHODOLOGY

This thesis uses realism and liberalism as the foundation theories for the methodology. This originates from the idea that while realism is relevant to examining China's assertiveness and the Philippines' and Vietnam's responses of allying with other powers and self-help defense, liberalism is best for explaining the disadvantages that small and medium-sized states have in dealing with larger states with greater powers, and the difficulties of an international organization like ASEAN in getting consensus from all of its member states for a particular issue. This is especially true when each member looks at the issue from a different perspective and the impact of that issue on each member is not the same.

Realism offers an adequate explanation for China's assertiveness when it argues that when a state can raise its power, it will search for changes in an international system through territorial, political and economic expansion.¹ It is easy to understand that China would not be satisfied with its status quo in the international system, when its regional power is increasing, and it is trying to change its position to become a real world power.

When China expands, its neighbors are concerned for their sovereignties and security. Based on realism, they are also going to do their utmost to protect their claims by deferring, building up their self-defense capabilities, or allying with other powers. In this chapter, the thesis is going to search for the application of these three choices by the two ASEAN member states, namely the Philippines and Vietnam.

Meanwhile, Liberalism provides an alternative. Unable to oppose powerful larger states directly in disputes, and unwilling to defer to them, a group of small and medium-

sized states may form some organizational relationship. Areas that would contribute to that relationship would be common geography, historical experience, political systems, economic status, similar national interests, and similar external security challenges. By forming a regional organization, member states would benefit from greater visibility and potentially greater opportunities for connections with outside powers that may add to their influence in bargaining negotiations. Such an organization may also contribute to regional peace and development, thereby, reducing defense expenditures while strengthening sovereignty and security.

Though member states of a regional bloc can enjoy a number of those advantages, they have the burden of reaching a consensus on key matters, especially a unified position on the issues to be negotiated with external powers. Consensus means that despite specific differences, all member states of an organization reach an internal agreement, satisfying their individual national interests for a common goal. The process toward a consensus could be cumbersome. It requires participant states to negotiate and compromise, put aside their differences, and be willing to sacrifice some of their interests for the benefit of the whole group. However, once a consensus is reached, the influence of the united group can be significant.

As soon as they reach an internal agreement, the position of the organization in general, and each member state in particular, can then be applied, and the organization could move forward further to influence external powers. These include the ones with whom they have territorial or other disputes or differences in regional issues. Other states outside the organization who are not parties to the disputes may be approached to add their influences to the position of the organization.

The organization then could negotiate in a more equal position on issues of trade, territory, and security. It could also influence the external powers, which have territorial disputes with its member states to first reach an agreement on the behavior of each claimant, aiming at reducing tensions, building mutual trust and understanding. Then, it can cooperate with these powers to frame and establish dispute settlement mechanisms to reach a long-term resolution for the issues.

ASEAN is composed of only small and medium sized states. Its position would be different if a major power were part of ASEAN, because that major power would add to the organization's influence, even when there is a failure to reach consensus.

Understanding its weakness, ASEAN has tried its utmost to involve both regional and world powers in ASEAN-centric multilateral institutions such as the ARF, ASEAN Free Trade Area, ASEAN plus China, Japan and South Korea (ASEAN+3), and ASEAN Defense Ministers' Meeting Plus (ADMM+). By doing so, ASEAN seeks to improve its capabilities in dealing with regional security challenges because external powers will see their benefits and responsibility in supporting a stronger ASEAN.

Nonetheless, tension in the South China Sea in recent years has become one of the most concerning issues that challenge ASEAN position. Four ASEAN member states, namely Brunei, Malaysia, the Philippines and Vietnam, have territorial disputes in the South China Sea with China and Taiwan. The disputes have been worse recently due to China's efforts to consolidate and even expand its interests and sovereignty in the disputed islands and waters. ASEAN, as a regional organization, has been involved in defusing tension in the South China Sea since the end of 1980s. Its efforts have been marked by the signing between ASEAN and China of the DoC in 2002, and the

guidelines for its implementation in 2011. However, after the expansion to become ASEAN-10, it has been more difficult for the organization to get a consensus over regional issues as its member states have huge differences in historical backgrounds, political systems, economic status, developments and foreign policy orientation to outside power.

The South China Sea issue represents a typical example of these differences. Several of its members have contested claims over the South China Sea with China and Taiwan as mentioned above. Even though some others do not have disputes, their economic development and national security could only be maintained when there is the freedom of movement, and no conflict in those contested waters, like Indonesia, Singapore and Thailand. Meanwhile, some others like Cambodia, Laos and Myanmar are not concerned about the problem of the territorial disputes, and do have close positive relations with China.

Among these differences and disparities, ASEAN needs to consolidate its position on the issue by first requiring its member states to recommit on its founding principles of unity and consensus. Second, ASEAN should review, reconfigure and supplement its diplomacy to make it an effective tool of integration. Last but not least, ASEAN should take advantage of the U.S. and other external powers' support to CoC to persuade the fluctuated members, reducing China's influence on them, to make them actively participate in internal consensus building process.

The next step is to use ASEAN internal consensus to influence China on the CoC negotiation. China has been trying to slow down the process of reaching an agreement by adding a number of obstacles, and arguing that "the time is not ripe" for talks on a code.

However, with non-stop ASEAN earlier this year, it finally agreed to work together with ASEAN to discuss the implementation of the CoC. As soon as the CoC is reached, ASEAN could use it to examine the implementation of each claimant, then, gradually establish a mechanism for settling the disputes; closely work with China and its claimants to seek a long-term and sustainable solution for the problem.

¹Liu Qian, “China’s Rise and Regional Strategy: Power, Interdependence, and Identity,” *Journal of Cambridge Studies* 5, no. 4 (December 2010): 78.

CHAPTER 4

CHINA AND THE SOUTH CHINA SEA

We are strongly committed to safeguarding the country's sovereignty and security, and defending our territorial integrity.

— Chinese President Xi Jinping, “China's Maritime Disputes”

The South China Sea plays a vital geostrategic role in China's economic development as well as its ambition to become a world power. Though China repeatedly confirms that it is willing to settle disputes with other claimants and will not use military force to solve the problem, China's ambition to turn those waters into its own territory has never changed. It is slowly, but simultaneously and systematically, taking steps to assert its territorial claims and expand its physical presence in the South China Sea. China's assertiveness has caused concern among other claimants, forcing these countries to focus more on consolidating relations with ASEAN and other external powers, relying on international legal instruments, as well as strengthening their military capabilities to protect their sovereignties. This chapter analyzes China's interests in the South China Sea and strategies that Beijing has applied to gradually turn all disputed islands, atolls, reefs and their adjacent waters in the South China Sea into its territory. The chapter then examines China's policy toward the disputes and the Philippines' as well as Vietnam's responses to protect their sovereignties. It concludes by arguing that China's ambition to occupy most of the South China Sea is unlikely to change and therefore, tensions will continue in the near future.

China's Interests in the South China Sea

China considers the South China Sea as its important national interest, which is vital to its security and development. As a regional power on the path to becoming a global power, China's key interests in the South China Sea include: national sovereignty; national resources; shipping lanes; establishing and maintaining close relations with its Southeast Asia neighbors; and military operations.

Safeguarding national sovereignty is regarded as the most important task of every state, and the top priority in the agenda of every government, especially when it is challenged. China has long claimed its sovereignty and jurisdiction over most of the South China Sea. The islands and its adjacent waters within the nine-dashed line are particularly considered as China's indisputable sovereignty. As a result, when confronted with this issue in negotiations with other claimants, it is unlikely to expect that China will compromise with individual states or groups.

Second, natural resources, including energy and fishery resources in the South China Sea are of great importance to China's economic development. This disputed water is believed to contain a huge amount of oil and gas reserves as well as seabed mineral deposits.¹ With the advancement of technology, it is now feasible for China to explore oil and gas in certain offshore areas, even in considerably deep-water areas. Fishing resources are also within the interests that China focuses on developing in order to meet the increasing demand of domestic and foreign markets. In recent years, China has deployed more and more fishing ships as well as the coastguard vessels to the disputed waters in the South China Sea, that occasionally cause clashes and seizures with other claimants' fishing ships and sea policing forces. With ever-growing demand for oil to

support its economic development and the increasing amount of fish needed to supply its domestic and international markets, it is understandable that China considers natural resources in the South China Sea as its top priority.

Third, shipping lanes in the South China Sea are critical to China's security and development, as its waters contain the second busiest sea lanes in the world. Among the world's powers, China has the highest demand for the freedom of navigation in the South China Sea. It is the main channel for the flow of Chinese external trade and energy transportation. Up to 80 percent of Chinese imported oil travels through the South China Sea.² China's sovereignty over waters and islands in the South China Sea would guarantee the free and safe travelling of its ships. It also supports China in supervising other countries' vessels travelling through the area, including naval ships of foreign forces.

Fourth, establishing and maintaining close relations with other countries surrounding the South China Sea directly contribute to the development of China. It is the key factor to assure the stability in the regional water, which is crucial to China's security. On one hand, maintaining good relations with its Southeast Asia neighbors helps China to cope with traditional and non-traditional security challenges that it could not handle alone, such as terrorism, transnational crimes, natural disasters, proliferation of weapons of mass destruction, and infectious diseases. On the other hand, these relationships also reduce the influence of other powers in the region and create conditions to settle the disputes in terms favorable to the Chinese.³

Fifth, the South China Sea has critical geopolitical importance to Chinese military operations. China is vigorously fostering its military modernization, particularly in the

naval field, advancing its anti-access capabilities to push foreign armed forces beyond the first island chain. Moreover, China has built a submarine base at Hainan Islands in the South China Sea. It is believed that China will deploy its ballistic missile submarines from there as part of its strategic nuclear deterrent force. Expanding control over the South China Sea would secure the operation of these submarines in the regional waters.⁴

It is clear that China has numerous interests in the South China Sea, and as China's economy and military are growing, these interests will be ever expanding. Hence, China will be unlikely to give up or narrow down its claims in the South China Sea. Even if its leaders wish to solve the disputes with neighboring countries, they will face obstacles embedded by the historical claims and the internal nationalism that prevents them from reaching a compromise with other countries on the territorial issue. Therefore, they will not be able to do much to address the disputes. Meanwhile, if they are too eager to pursue the objective of taking control over the whole area within the nine-dash line by using hostile actions or the overwhelming military power, they will cope with vigorous protests from other claimants and the international community. This includes the possibility of a war, which will impact China's economy and the image of peaceful emergence that it has attempted to build so far. It also has no capability to establish control over this large area in the South China Sea, particularly when there are key sea lines of communication passing, and a large amount of ships sailing in these sea lines of communication are commercial and naval ships of the world and regional powers like the U.S., Japan and the Republic of Korea.

As a result, it is predictable that in the near future, China will not arrive at a compromise over the disputes in the South China Sea with other claimants, and it will not

use military power to take control of the whole area within its nine-dash line. Instead, China will continue with strategies and policy that it has effectively applied in the last several decades to gradually increase its presence in the area to consolidate its claims. The following section will examine several of those strategies.

China Strategies Towards the South China Sea Disputes

The South China Sea disputes have long been at the top of the agenda of every Chinese leadership generation. Therefore, the strategies towards the disputes are also a matter of concern for them. By examining Chinese assertiveness toward the disputes, it is possible to define several typical strategies that China has applied to manage its claims, including the delaying, salami slicing, and cabbage strategies.

Delaying Strategy

China has applied the strategy of delaying a resolution for the disputes in the South China Sea for several decades.⁵ Its goal is to consolidate China's claims, particularly to the maritime right and jurisdiction over the disputed waters, and to prevent other states from consolidating their own claims at Chinese expense. It is said that states prefer to apply a delaying strategy for several reasons. First, when a state's military capabilities is weaker than its opponents, a delaying strategy would be effective since it can buy time to consolidate its position for a more favorable outcome in the future. Second, when a dispute is considered uncontrollable and difficult to solve, a delaying strategy can be a good choice for conflict management. Third, the application of this strategy could allow a state to strengthen its claim, and consolidate its control over the disputes.⁶

The Chinese application of delaying strategy could be clearly seen in the field of diplomacy, where its leaders have repeatedly said that China is willing to negotiate with other South China Sea claimants to settle the disputes. However, China always insists on bilateral negotiations to settle the disputes while the contest over Spratly Islands and its adjacent waters in the South China Sea involved six different claimants. It would be irrelevant for only two involved parties to discuss the settlement without considering the others' claims. Moreover, China has rejected negotiations on the issue of sovereignty, arguing that its sovereignty in the South China Sea is non-negotiable and indisputable. Therefore, negotiation to China only means temporary arrangements,⁷ and it only negotiates for control of other nations' resources based on the guideline "what is mine is mine, and we will negotiate what is yours."⁸ This approach effectively supports the delaying strategy, because China acknowledges that other claimants are reluctant to sit down at the table to negotiate when they know that they cannot have equal positions and the resolutions would never be in their favors. As a result, China could show its willingness to negotiate without actually sitting down at a negotiation table, and instead postpone any resolution of the disputes to buy time for its consolidation of military capabilities.⁹

China has also applied delaying strategy in consolidating its effort to exercise jurisdiction over the waters that it claims through the activities of civil maritime law enforcement agencies. Over the last decades, China has slowly but steadily consolidated its presence in the South China Sea primarily by increasing the frequency of patrols by vessels belonging to maritime law enforcement agencies, such as the South China Sea Region Fisheries Administration Bureau and the China Marine Surveillance service.¹⁰

The main functions of these vessels are to enforce domestic fishing laws, provide aid and assistance to Chinese fishing fleet, escort Chinese vessels, and prevent other claimant's ships from operating in disputed waters.¹¹ With the excuse that other claimants' fishery ships have regularly challenged China's claims over islands and its adjacent waters in the South China Sea, in recent years, Chinese maritime law enforcement vessels have detained and even confiscated a number of Vietnamese anglers and their ships when they were operating in disputed waters around the Paracels. Furthermore, China has used China Marine Surveillance vessels to intimidate several Philippine and Vietnamese survey ships when these ships were conducting seismic surveys within their Exclusive Economic Zones (EEZs). It is obvious that instead of contributing to regional peace, stability, and security, the actions of these Chinese maritime agencies are destabilizing and causing the likelihood of war in the region. The strategic implications of these well-planned confrontations are to prevent other claimants from asserting their claims and strengthen China's own claims to jurisdiction over disputed waters.¹² China can take control of maritime areas which it has not administered or controlled in the last several thousand years through actions that are gradual and nonaggressive, but consistent and increasing.¹³

Salami-Slicing Strategy

Recently, observers tend to believe that China is conducting salami-slicing strategy towards the disputes in the South China Sea. It is the slow accumulation of small but persistent actions, none of which is a *casus belli*, but which adds up over time to a major strategic transformation in China's favor.¹⁴ The goal of this strategy is to piece by piece consolidate China's presence in disputed areas where it claims sovereignty, while

seriously narrowing the options of other claimants by confounding their deterrence plans and making it difficult for them to conceive proportionate or effective counteractions.¹⁵ Geographically, this strategy can be seen in a series of recent Chinese actions from the occupation of the Johnson Reef in 1988, the Mischief Reef in 1995, to the expansion of fishing rights, granting hydrocarbon-exploration leases deeply within the 200-nautical-mile EEZs of other South China Sea claimants, and the official announcement of the establishment of “Sansha City” on Woody (Phú Lâm) Island in the Paracels as its administrative base for the South China Sea, forming a local civilian government and a military garrison there to monitor the whole region.¹⁶ Diplomatically, China uses its economic and politic influence on several ASEAN member states to separate them from the entire regional consensus on the South China Sea issue.

Each of the above-mentioned actions is not serious enough to cause war, therefore it functions to keep China’s opponents off balance and in a difficult situation to which they do not know how to respond. As a skillful salami-slicer, China makes its opponents weaker, and casts the burden of triggering tensions on them when they react to its actions.¹⁷

Cabbage Strategy

A new strategy that China successfully deployed in seizing control of Scarborough Shoal and is encouraged to apply in other disputed islands in the South China Sea is called the “cabbage strategy.” The Scarborough Shoal standoff broke out on 8 April 2012 when the Philippine Navy’s flagship, the BRP *Gregorio del Pilar* managed to capture several Chinese fishing boats at the shoal. However, two Chinese maritime surveillance vessels arrived and deterred the arrest of the Chinese fishermen who were

catching corals, clams, and live sharks in their boats.¹⁸ Soon after that, China deployed more ships to the area, applied “cabbage strategy” to force the Philippines coastguard vessels to withdraw, and took control the shoal. The strategy was conducted by deploying fishing administration vessels and marine surveillance ships to carry out patrols around the shoal, while the outer ring is controlled by navy warships.¹⁹ As a result, the shoal is wrapped layer by layer like a cabbage. If the Philippines ships want to enter the shoal, they have to ask for permission from Chinese navy ships and then again from the fishery administration ships and maritime surveillance vessels.²⁰ By doing that, Chinese fishermen can carry on their fishing safely inside the shoal and China gains the marine rights, interests and sovereignty over the area.²¹ After successfully applying it in Scarborough Shoal, there have been more and more Chinese voices calling for the application of this strategy to Second Thomas Shoal and other disputed islands in the South China Sea.²²

Altogether, these strategies show that China has always been firm in its stance towards the South China Sea disputes and become more and more assertive. Therefore, if ASEAN and its South China Sea claimant states do not have any more effective measures to address the disputes, then China will achieve its objective of controlling most of the South China Sea. With the aim of bringing the readers a clearer picture of the disputes in the South China Sea, the following section of this chapter will examine China’s policy toward the disputes as well as the Philippine and Vietnam responses based on the Realism and Liberalism.

China's Policy Toward the Disputes

China's policy relating to the maritime territorial disputes in the South China Sea has been relatively consistent for several decades and in accordance with Deng Xiaoping's guideline of "sovereignty is ours, set aside disputes, pursue joint development."²³ It means to delay a resolution to the disputed claims and focus on cooperative methods in order to prevent tensions in the disputes from harming China's broader bilateral relations with other claimant states.²⁴ Even though it seems that China has never been willing to put aside territorial claims, the guideline remains a mantra of Beijing's policy and it is not going to change.

China has pursued solving disputes bilaterally not multilaterally, despite signing a DoC with ASEAN in 2002. China opposes all efforts to internationalize the issue and the intervention of non-claimant states. At the last ASEAN+3 Summit in Brunei on 10 October 2013, Chinese Prime Minister Li Keqiang said that the South China Sea disputes should be addressed peacefully through negotiations and consensus between the countries directly involved, and non-claimant countries should not interfere in the issue.²⁵ China therefore rejects discussing the issue at regional security meetings, such as the ADMM-Plus and ARF. Furthermore, China opposes addressing the disputes by using international arbitration, perhaps because it feels it does not have strong evidence for its claims, which do not fit in the international law and UNCLOS. Moreover, once there a case is sent to international arbitration, which means there will be a third party involved. In 2013, when the Philippines expressed its determination to bring the South China Sea disputes to the Arbitral Tribunal, China reacted angrily by saying that it was firmly opposed to the Philippines' indifference to China's lawful rights and interests and legitimate concerns as

well as its willful act of pushing for international arbitration.²⁶ By pursuing bilateral settlement of the disputes, China manages to divide other claimants so that it can discuss from a stronger position. Although China opposes multilateral negotiation to address the disputes, it does not mean that China will not accept sitting down at a multilateral table. Experiencing other claimants united on a common policy of maintaining the territorial status quo in mid-2011, and the possibility of interference from external powers, China adjusted its policy by accepting the implementation guidelines for a nonbinding DoC. Recently, China has agreed to negotiate a binding CoC with ASEAN.

It is predictable that in time, China will continue to consider Deng's guideline as the foundation for its actions towards the disputes in the South China Sea. Bilateral negotiation will still be its top priority. Nonetheless, once other claimants can be a coalition, China may have to accept adjustment in its policy in order to maintain close relations with these states and not to allow them to become allied with external powers.

As the two biggest ASEAN member claimants in the South China Sea, the Philippines and Vietnam are the states most affected due to Chinese unilateral approaches towards the disputes and its functioning agencies' hostile actions with the two countries' fishing boats and seismic survey vessels. As a result, they both have to take necessary actions to protect their sovereignties. The following section of this chapter will look at the two countries' responses towards the disputes under the lens of Liberalism and Realism.

The Philippines

Regarding Liberalism, as the co-founder of ASEAN, the Philippines relies on the agenda of ASEAN-central diplomacy and its frameworks of multilateral dialogues, and

works with other ASEAN member states to get a consensus and engage China for a binding CoC. Moreover, in 2011, the Philippine President Benigno Aquino suggested an initiative urging claimants to make the South China Sea a Zone of Peace, Freedom, Friendship and Cooperation. This provides a framework for separating the non-disputed areas from the disputed ones in the South China Sea in accordance with the international law and UNCLOS and is considered as the guideline in Manila's negotiations to settle its disputed waters.²⁷ In January 2013, the Philippines submitted their overlapping jurisdictional claims with China to the United Nations, which challenged China's claim as violating the Philippines 200 nautical miles EEZ.²⁸

Regarding Realism, in response to China's assertiveness, the Philippines often vigorously protests every single Chinese approach to consolidate its presence in disputed islands and waters. Manila also uses media and press to express its opinion and encourages its people to raise their voices. Due to its weaker military power, instead of launching a war against Chinese, the Philippines chooses deferring at times, so the situation will not become worse. On the other hand, Manila has also consolidated its relationships, particularly the military relations with regional states and world powers like the U.S. and Japan. In January 2013, in his first official overseas visit, Japanese Foreign Minister Fumio Kishida promised to provide the Philippines Coast Guard with several patrol boats in 18 months. The Philippines and Japan also vowed to coordinate to help the U.S. maximize its rebalance to Asia Pacific.²⁹ The Philippines in particular have taken necessary steps to foster its allied relation with the U.S. The two sides are said to keep their negotiations on track for a Framework Agreement that would permit U.S. forces to operate on Philippine military bases and in its territory and waters to strengthen

Philippine armed forces' capability in maritime security and maritime domain awareness.³⁰ At the end of June 2013, the Philippine Navy and the U.S. Navy held a joint exercise, namely 19th Cooperation Afloat Readiness and Training near the Second James Shoal aimed at improving capabilities on counter-terrorism, maritime security operations, disaster response and even humanitarian missions. More than 1,000 men and a number of destroyers, frigates, other vessels and airplanes from the both sides participated in the exercise.³¹

In addition, the Philippines also focuses on enhancing its armed forces' capacity. In December 2012, the Philippine President Benigno Aquino signed into the Republic Act 10349, the New Armed Forces of the Philippines Modernization Act, which called for extension of another 15 years the Armed Forces' Modernization with the fund of P75 billion (1.75 billion USD) for the first five years to strengthen the armed forces' capability. The Republic Act 10349 aimed to help the country's armed forces to acquire equipment in its Medium Term (2013-2017). Acquisition List which includes jet fighters, 21 helicopters for the Philippine Air Force; two missile-firing frigates and two anti-submarine helicopters for the Philippine Navy; and modern protection equipment for the Philippine Army.³²

Vietnam

Similar to the Philippines, Vietnam is also extremely concerned about the complexity of the disputes in the South China Sea. It has taken necessary steps to maintain its sovereignty over the islands and waters in the South China Sea which have long been its territory and within its 200 EEZ miles.

Regarding Liberalism, with the hope of defusing tensions and looking for a long-term practical solution in the South China Sea, Vietnam is active in cooperating with other ASEAN nations and China to fully and effectively implement the principles and regulations stipulated in the DoC. It urges ASEAN to take more trust-building activities between its member states within the framework of DoC. Vietnam also supports to ASEAN's common viewpoint on the need to finalize a binding CoC which stipulates rules and behaviors of the concerned parties to maintain peace, maritime security and safety, manage disputes and resolve disagreements through peaceful means on the basis of international law and the 1982 UNCLOS.³³

Regarding Realism, Vietnam has repeatedly stated that it has enough evidence and sufficient legal grounds to confirm its sovereign claims over both the Paracel Islands (Quần đảo Hoàng Sa) and Spratly Islands (Quần đảo Trường Sa). However, similar to the Philippines, when clashes or incidents happen between the naval forces of China and Vietnam similar to what occurred in 1974 and 1988, when China used its naval forces to occupy the Paracel Islands and Johnson Reef in the Spratly Islands of Vietnam, Hanoi chose deferring periodically to keep the situation from becoming worse. In parallel, Vietnam manages to hold bilateral discussions with China to settle the disputes on matters that do not affect third parties, like the waters at the mouth of the Gulf of Tonkin and the Paracel Islands. In recent years, Vietnam's and China's leaders have regularly discussed how to manage the South China Sea disputes. In June 2013, during his official visit to China, Vietnamese President Truong Tan Sang stressed with his Chinese counterpart Xi Jinping that Vietnam wanted to solve their disputes through talks.³⁴

Meanwhile, Vietnam also states that issues related to other countries and parties like the Spratly Islands cannot be settled by only Vietnam and China; they require the participation of other concerned parties. For issues that are not only related to countries that border the South China Sea such as maritime safety and security, they must be negotiated and settled by all countries that share these common interests.³⁵ Relating to the Chinese nine-dash line, in his visit to Washington, President Sang said that Vietnam could not find any legal ground or scientific basis for the Chinese nine-dash line, therefore Vietnamese consistent policy is to oppose it.³⁶

Vietnam has broadened and strengthened its relations with a number of countries, including the U.S. In 2013, Vietnam has upgraded its relations to strategic partnership with France, Indonesia, Singapore, and Thailand, and to comprehensive partnership with the U.S. On defense relations in particular, Vietnam has conducted an exchange of military delegations at all levels, including defense consultancy and dialogue, cooperation in training and education, mutual trust and understanding, confidence building and conflict prevention.³⁷ Vietnam has conducted joint naval patrols with China and its neighboring ASEAN states which share maritime boundaries. In recent years, Vietnam has also paid attention to modernizing its armed forces, focusing on improving the navy and air force capabilities. Vietnam has ordered six Project-636 Kilo-class submarines, eight Su-30 multi-role fighters and several corvettes, anti-ship missiles systems from Russia, and is said to be interested in acquiring the US Lockheed Martin P-3 Orion marine patrol aircraft.³⁸

Conclusion

This chapter is based on using Realism and Liberalism to examine China's interests, strategies, policy in the South China Sea, as well as the Philippines' and Vietnam's responses in order to provide the readers a more comprehensive picture of the disputes and the approaches of the main disputants in the South China Sea. China has numerous vital interests in the South China Sea, which include safeguarding national sovereignty, natural resources, sea lines of communication, close relations with its neighboring countries, and background for military operations. Approaching to the disputes, China has effectively applied different strategies namely Delaying, Salami-slicing, and Cabbage, to delay a long-term settlement for the issue, buying time for it to consolidate military capabilities, and gradually take control of most of the South China Sea. Its policy, which stresses solving territorial disputes bilaterally, has not changed since the end of 1970s. However, with the wish to maintain close relations with ASEAN and the fear of the intervention by external powers to the South China Sea issues, China has accepted a multilateral approach to the issues by signing guidelines for the implementation of DoC in 2011, and starting to sit down at a table to discuss a binding CoC with ASEAN in 2013. It has created a breakthrough that brings about a hope for finding a long-term solution for the disputes in the South China Sea.

The examination of the Philippines' and Vietnam's responses to China's assertiveness reflexes the complexity of the disputes. Under realism, these two ASEAN's claimants have repeatedly reaffirmed their claims. Moreover, they have also employed a number of approaches to consolidate their sovereignties, both on diplomatic and military fronts, including relying on UNCLOS, strengthening relations with neighboring countries

and external powers, and improving defensive capabilities. In addition, under liberalism, the Philippines and Vietnam have joined together in ASEAN and are pushing for a consensus of the South China Sea issue among ASEAN member states.

Leaders of China as well as ASEAN's claimants have repeatedly expressed their wishes to solve the disputes. However, their approaches to a settlement are different and none of them would be willing to compromise on the issue of sovereignty. Therefore, it is predictable that the situation in the South China Sea will continue to be complicated in the coming years.

The following chapter will focus on examining ASEAN's norms and principles to address its security challenges and its efforts and capabilities of managing the South China Sea disputes.

¹O'Rourke.

²Brendan, 84.

³Ibid.

⁴O'Rourke.

⁵Fravel M. Taylor, "China's Strategy in the South China Sea," *Contemporary Southeast Asia* 33, no. 3 (2011): 292.

⁶Ibid., 297.

⁷Huy Duong, "Negotiating the South China Sea," *The Diplomat*, 20 July 2011, <http://thediplomat.com/asean-beat/2011/07/20/negotiating-the-south-china-sea/> (accessed 30 September 2013).

⁸O'Rourke.

⁹Taylor, "China's Strategy in the South China Sea," 300.

¹⁰Ian Storey, "China's Bilateral and Multilateral Diplomacy in the South China Sea," in *Cooperation from Strength: The United States, China and the South China Sea*, ed. Patrick M. Cronin (Washington, DC: Center for New American Security, January

2012), http://www.cnas.org/files/documents/publications/CNAS_CooperationFromStrength_Cronin_1.pdf (accessed 20 May 2013), 54.

¹¹Taylor, "China's Strategy in the South China Sea," 305.

¹²*Ibid.*, 307.

¹³Barbara Demick, "China Wages Stealth War in Asia Waters," *Los Angeles Times*, 27 March 2013.

¹⁴Robert Haddick, "Salami Slicing in the South China Sea," *Foreign Policy*, 3 August 2012, http://www.foreignpolicy.com/articles/2012/08/03/salami_slicing_in_the_south_china_sea (accessed 1 October 2013).

¹⁵Brahma Chellaney, "China's Salami-Slicing Strategy," *Japan Times*, 25 July 2013, <http://www.japantimes.co.jp/opinion/2013/07/25/commentary/chinas-salami-slice-strategy/#.UkuEslMgrTK> (accessed 1 October 2013).

¹⁶*Ibid.*

¹⁷*Ibid.*

¹⁸Jason Miks, "China, Philippines in Standoff," *The Diplomat*, 11 April 2012, <http://thediplomat.com/the-editor/2012/04/11/china-philippines-in-standoff/> (accessed 2 October 2013).

¹⁹Zhaozhong Zhang, "China Boasts Strategy to 'Rrecover' Islands Occupied by Philippines," *China Daily Mail*, 28 May 2013, <http://chinadailymail.com/2013/05/28/china-boasts-of-strategy-to-recover-islands-occupied-by-philippines/> (accessed 2 October 2013).

²⁰*Ibid.*

²¹*Ibid.*

²²O'Rourke.

²³Storey, "China's Bilateral and Multilateral Diplomacy in the South China Sea," 56.

²⁴*Ibid.*

²⁵Shuo, Han, Seri Begawan, and Liu Yunlong, "Li Hits out at S.China Sea Interference," *Globaltimes*, 13 October 2013, <http://www.globaltimes.cn/content/817055.shtml#.UmSVtFN0LhE> (accessed 19 October 2013).

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CHAPTER 5

ASEAN AND THE SOUTH CHINA SEA DISPUTES

The South China Sea issue is not just about competing claims; it is about peace and stability in the region.

— ASEAN Secretary General Le Luong Minh, “China’s Maritime Disputes”

As a regional organization, ASEAN plays a key role in managing regional affairs, maintaining peace, stability and development in the region. ASEAN has been involved in the South China Sea disputes since the end of the 1980s. Its efforts aim at reducing tensions, building mutual trust and understanding, and looking for a long-term solution for the issue. This chapter will be based on Liberalism to examine the role that ASEAN has played in settling the South China Sea disputes to understand what it is capable of doing regarding the issue. It begins with the analysis of ASEAN’s main norms and principles on managing regional affairs. It then looks at the two main ASEAN-central security mechanisms, namely ARF and ADMM. The follow on section of the chapter will concentrate on ASEAN’s involvement in addressing the South China Sea disputes with China thus far. It concludes by arguing that ASEAN and its security mechanisms have made great contributions to the avoidance of intra-regional conflict, the enhancement of cooperation among its member states, and the maintenance of peace, stability and security in the region. For the South China Sea issue, ASEAN has been active in getting a unified position on the issue among its members and working with China to settle the disputes. However, due to the complexity of the issue and the difficulty in getting consensus of all member states, its contribution is still lackluster.

Liberalism considers the proliferation of shared norms and values has brought about a kind of moral interdependence.¹ This argument is relevant to the case of ASEAN's foundation and its mechanisms on settling regional security challenges. Founded in Bangkok, Thailand in 1967, ASEAN, with its five founders, namely Indonesia, Malaysia, the Philippines, Singapore and Thailand, aimed to boost intra-mutual stability and peace.² According to its Declaration, ASEAN would focus on accelerating the economic growth, social progress and cultural development in the region, and promoting regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region.³ However, it was the regional security that was the first preoccupation of the founders. In the following years, ASEAN has gradually shaped norms and principles, which are called the ASEAN Way, to address its internal security challenges. The ASEAN Way is the process of intra-mural interaction, which is distinguished from other multilateral settings. It stresses a high level of informality, organizational minimalism, the practice of quiet diplomacy, inclusiveness, intensive consultations leading to consensus and peaceful resolution of disputes.⁴ The ASEAN Way respects the sovereignty and independence of its member states while focusing on not settling, but on preventing intraregional conflicts between them. It highlights the principle of non-interference, which is considered the key reason that keeps the region out of military conflict between any two ASEAN countries since its foundation.⁵ It allowed ASEAN to shape itself as a regional organization in a region full of mutual suspicion, distrust and political rivalry.⁶ Through this principle, ASEAN has assured a good security environment for its member states that in return has assured the survival of the organization.⁷ However, it is also this principle that prevents the

organization from solving regional conflict as each member can only voice a position on behalf of its own nation.

Meanwhile, the consultation and consensus principle is considered fundamental in ASEAN cooperation.⁸ Through consultation, consensus is gradually formed among all participants through the avoidance of stated disagreement.⁹ By applying a consensus principle, each member state has an equal position, allowing smaller and weaker states to have their voices heard. As a regional organization of nations with highly diversified backgrounds, in terms of geographic size and location, history, culture, social-economic development, and political system, this principle is extremely important to band all states together, and to maintain the unity among its member states in the eyes of the international community. It has played the key role in the process of reconciliation and unification since ASEAN's foundation in 1967.¹⁰ Yet, together with the expansion from ASEAN 5 to ASEAN 10 (with the admission of Brunei, Vietnam, Laos, Cambodia, and Myanmar in 1980s and 1990s), it has been more difficult for the Association to get consensus to a particular regional issue.

Relating to the South China Sea disputes, four of the ASEAN member states have direct contested claims over the South China Sea with China and Taiwan, namely Brunei, Malaysia, the Philippines and Vietnam. While some others do not have disputes, their economic development and national security could only be maintained when there is freedom of movement and no conflict in those contested waters, like Indonesia, Singapore and Thailand. Meanwhile, some others like Cambodia, Laos and Myanmar have almost no interests in the South China Sea, but do have close relations with China. As the result, ASEAN has been struggling with getting a consensus of the whole

organization on the issue. Instead of keeping ASEAN unified, this principle makes the organization fragile and becomes an impediment to ASEAN's progress. If one member chooses to oppose an issue because it feels that it would gain greater interests if it supports an external power rather than the unification of the organization, there will not be consensus. What happened in Phnompenh, Cambodia in 2012 is a typical example of this when Cambodian diplomats tried to prevent the organization from taking a common position on regional security in a document that was supposed to show ASEAN's unity.¹¹ An external power might realize this weakness and use its influence on a particular ASEAN's member state to block an organization's decision if it is not in favor of that power, such as China has used its influence to get Cambodia and Myanmar to support its claims and approach in the South China Sea.¹²

Although non-interference and consensus are still vital important principles in maintaining regional unity, in a more challenging situation, now they seem somewhat irrelevant. Therefore, they should be more flexible or non-absolute so that ASEAN can react faster and more effective in dealing with new regional challenges.

Besides, norms and principles, ASEAN has also set up a number of mechanisms to address both its traditional and non-traditional security challenges, particularly the South China Sea disputes, such as the ARF, the ADMM, ADMM Plus, and series of Track II (informal) workshops. The chapter continues by looking at the ADMM and the ARF to see what they can contribute to ASEAN's effort in this issue.

The ADMM

Established in 2006, the ADMM is the highest level defense mechanism within ASEAN, aiming at strengthening coordination and cooperation among member states,

promoting confidence building and broadening cooperation with ASEAN partners to ensure peace and stability in the region.¹³ Not long after its foundation, the ADMM quickly focused on methods to addressing non-traditional security threats and enhancing cooperation with ASEAN's dialogue partners. The ADMM continues to exchange views on dealing with non-traditional security challenges and discusses the demand to enhance practical defense cooperation, aiming at making more contributions to regional peace and stability.¹⁴ At the Second ADMM in Singapore in 2007, the participants adopted the ADMM Plus Concept Paper to engage ASEAN's Dialogue Partners to participate in dialogue and cooperation on defense and security matters. The Inaugural ADMM Plus was convened in Hanoi on 12 October 2010 with the participation of defense ministers from 10 ASEAN member states and their counterparts from eight dialogue partners, namely Australia, China, India, Japan, the Republic of Korea, New Zealand, the Russian Federation and the U.S. The ADMM-Plus is the highest ministerial level mechanism of defense cooperation in the region, with the ability to direct and guide the cooperation programs in response to common security threats.¹⁵ It is considered the key component of a robust, effective, open, and inclusive regional security architecture that would enable the ADMM to cooperate with the eight "Plus" countries to cope with common security challenges.¹⁶ The key reason and driver for ADMM Plus is ASEAN centrality, so cooperation within its framework also follows the ASEAN principles of respect for independence and sovereignty, non-interference in internal affairs of member states, consultation and consensus, and moving at a pace comfortable to all parties.¹⁷ A number of workshops, meetings and exercises have been held in the last three years. The most impressive event is the Humanitarian Assistance and Disaster Relief and Military

Medicine joint exercise held in Brunei in June 2013, with the participation of more than 3,000 troops, seven ships and 15 helicopters from all 18 members. In the second ADMM-Plus, held in Brunei August 2013, the Defense Ministers reviewed the impressive progress of ADMM-Plus cooperation and discussed proposals to deepen ties in five priority areas identified in the first meeting, namely the humanitarian assistance and disaster relief, medicine, maritime security, peacekeeping and counter-terrorism.¹⁸

The ASEAN Regional Forum

The ARF was created in 1994 to discuss regional security challenges and develop cooperative measures to enhance peace and security in the region.¹⁹ It was an attempt to give ASEAN a key role by increasing its exclusive, cooperative security culture to relations between all Asia-Pacific countries. It also reflects ASEAN's wishes to manage the challenges by creating a consensus and mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations.²⁰ ARF is not a collective security arrangement, nor is it created to address specific regional disputes. Instead, it manages to get long-term peace by accelerating a sense of mutual trust.²¹ In its second meeting in 1995, the ARF agreed on a three-stage progression toward comprehensive security in ASEAN, which would move from confidence building to preventive diplomacy, and the development of mechanisms for conflict resolution.²² However, for the last nearly 20 years, the ARF has not made any significant progress, and stopped at confidence-building measures. The expectation for it to move into the second stage of preventive diplomacy or the long-postponed apex of ARF maturation,; conflict resolution, seems to be irrelevant at this moment.²³ Furthermore, powers like the U.S., Japan, Australia and Canada have urged a more proactive agenda, the ASEAN Way,

which requires consensus, has been the main obstacle to achieving it.²⁴ In the ARF annual meeting, the South China Sea issues have always been on the top of the agenda. In the 2 July 2013 meeting in Brunei, the U.S. Secretary of State John Kerry reaffirmed the U.S. national interests in peace, stability, unimpeded commerce, freedom of navigation, and respect of international law, while taking no position on any side's territorial claims. He also endorsed the Philippines' submission to the UNCLOS Arbitral Tribunal by saying that the U.S. supports "the use of legal mechanisms, including arbitration" to address the disputes.²⁵ The meeting also welcomed the joint agreement between China and ASEAN to hold negotiations on a binding CoC in Beijing in September.

Although there are limitations, the ARF is still an essential "talk shop" for ASEAN, its dialogue partners, and its neighboring nations to exchange ideas, build trust cooperate to cope with regional security challenges. Together with other security mechanisms like ADMM and Track-two workshops, ARF is contributing to maintaining peace, stability and security in the region.

With the guidelines of the ASEAN Way and effective security mechanisms, ASEAN has become a cooperative security regime. Its greatest contribution so far has been the avoidance and management of conflict and the maintenance of peace, stability and security in the region. The ASEAN approach to conflict avoidance and management has mainly relied on the principles of non-interference in internal affairs, consultation and consensus building. ASEAN has also been successful in fulfilling several objectives related to its security mechanisms including the enhancement of ASEAN centrality, the building of mutual trust, and the cooperation to cope with traditional and non-traditional security challenges.

However, it is these principles that have created limitations to ASEAN to serve as a strong regional organization. As a diplomatic tool to manage intra-regional disputes, ASEAN has not been able to solve sources of conflict and each of its members can only voice positions on behalf of its own nation. Furthermore, in a region so diversified, where each of its member states is different from the others in the areas of geography, economy, culture, and social structure, it is not easy for ASEAN to get a consensus on a specific matter, particularly when that matter does not have a similar impact on each regional country.

In the following section, the thesis will examine the efforts that ASEAN has made so far in negotiating and cooperating with China to manage the disputes in the South China Sea. It will focus on the process to reach and implement the DoC, as well as the ASEAN's struggle to reach consensus and negotiate with China for the CoC.

ASEAN, China and the South China Sea

Acknowledging the growing strategic importance of building a close relationship between ASEAN and China, in the last several decades the two sides have tried to consolidate their relations, focusing on common goals and aspirations, particularly on trade and security. China has been involved in accelerating regional processes and mechanisms including the ASEAN+3 process (ASEAN member states and China, Japan and Korea), ASEAN-China Free Trade Agreement, ARF, East Asia Summit and recent built up RCEP—include 10 ASEAN regional nations and China, Japan, South Korea, Australia, New Zealand and India). The main obstacle in relations between the two sides now is the South China Sea disputes. China has repeatedly said that the problem in the South China Sea should not harm China's relations with ASEAN because the Association

does not have a direct role in the disputes. However, as a regional organization, with four of its member states having direct disputes with China in the South China Sea, while all other states have direct or indirect interests in those waters, ASEAN can help involving in managing the situation there.

Since the end of 1980s, ASEAN has played an active role in response to developments in the South China Sea. After the Sino-Vietnamese naval confrontation in March 1988, ASEAN member states felt concern about the situation and wanted to take a conciliatory approach towards China by fostering economic and security relations to engage China in a peaceful and stable regional order.²⁶ At the same time, China seemed willing to constrain vis-à-vis ASEAN claimants. When Chinese Prime Minister Li Peng visited Singapore in August 1990, he declared that China wanted to set aside the territorial dispute and proposed joint exploration and development in the Spratly Islands with the Southeast Asian states.²⁷ However, China's actions were not in accordance with Peng's words when in February 1992 Beijing passed the Law on the territorial waters and contiguous areas, which reaffirmed China's claims in the South China Sea and stipulated the right to use force to protect islands, including the Spratlys and their surrounding waters.²⁸

ASEAN responded to the new Chinese law during its annual meeting of the members' foreign ministers in Manila in July 1992 by issuing the ASEAN Declaration on the South China Sea. The Declaration emphasized the necessity to settle the disputes by peaceful means without resorting to the use of force. It went further by urging all parties concerned to exercise restraint in order to create a positive climate for the eventual resolution of all disputes in the area.²⁹ It also recommended all parties to apply the

principles contained in the Treaty of Amity and Cooperation as the basis for establishing a code of international conduct in the South China Sea.³⁰ The Declaration neither mentioned how to solve the problem of sovereignty and jurisdiction over the Spratly Islands, nor showed the consensus on the territorial issue. It only attempted to foster a peaceful management of the disputes.³¹ By reaching this Declaration, ASEAN indicated that it could get a compromise on the South China Sea disputes, and it was a cohesion organization despite intra-mural differences. However, Chinese foreign minister Qian Qichen did not sign the Declaration, even though he was also in Manila as the guest of the ASEAN chair. The Chinese side argued that it had not been involved in drafting the Declaration.³²

Besides the Declaration, early 1990 also witnessed the attempt to form a multilateral dialogue on the South China Sea with the emergence of the Workshops on Managing Potential Conflicts in the South China Sea, which was sponsored by Indonesia and financed by Canada. Together, the Declaration and Workshops raised hopes for peace and stability in the South China Sea, despite little chance of solving contested territorial and maritime claims in a definitive manner.³³

ASEAN's efforts were set back by the 1995 Mischief Reef incident, when the Philippines announced the discovery of the construction of structures on the disputed reef by the Chinese. It severely violated the principles included in the 1992 Declaration. The ASEAN states did not have a common complaint. However, under the pressure from the Philippines, ASEAN eventually issued a statement during its meeting held in Singapore on 18 March 1995, which expressed the Association's concern over developments affecting peace and stability in the South China Sea.³⁴ It also "called for the early

resolution of the problems caused by recent developments in Mischief Reef, urged countries in the region to undertake cooperative activities which increase trust and confidence and promote stability in the area, and encouraged all claimants and other countries in Southeast Asia to address the issue in various fora.”³⁵

The second ARF meeting in Brunei on 1 August 1995 was influenced by the Mischief Reef incident. The South China Sea was included in the chairman’s statement. It stated that the participants “encouraged all claimants to reaffirm their commitment to the principles contained in relevant international laws and conventions, and the 1992 Declaration on the South China Sea.”³⁶ At ASEAN Post Minister Conference, the Chinese Foreign Minister made a concession when he announced that China was prepared to organize multilateral discussions on the Spratlys issue, rather than limit its diplomacy to bilateral talks, and to accept the 1982 Convention on the Law of the Sea as the foundation for negotiation.³⁷ However, this concession did not mean that China changed its territorial objectives in the South China Sea. China was still unwilling to solve the issue of jurisdiction and sovereignty and repeatedly confirmed its territorial claims over nearly the entire South China Sea.³⁸

The next several years still witnessed Chinese assertiveness over its territorial claims. However, there were not any serious incidents, while there were attempts by ASEAN and its member states to work out a binding code of conduct. At the 35th AMM in Brunei, in July 2002, Malaysia proposed a declaration for the Spratly Islands. It was a non-binding document aimed at regulating conduct in the disputed areas. However, most of ASEAN member states refused to support it, since they preferred the adoption of a

binding document. Failing to get a consensus, in their joint communiqué the ASEAN foreign ministers only stated that they would work closely with China towards a DoC.³⁹

Finally, the DoC was signed at the eighth ASEAN summit in Phnom Penh in November 2002. The agreement aimed at preventing further tensions over the disputed territories and decreasing the risks of military conflict in the South China Sea. The parties stipulated their adherence to international norms of behavior, such as peaceful resolution of disputes and the agreement not to use or threaten to use force; to respect freedom of navigation; to exercise “self-restrain,” so as not to “complicate or escalate” disputes; to undertake cooperative confidence building measures; to conduct consultations and dialogues; and to work toward a code of conduct.⁴⁰

After years of negotiations, what ASEAN and China agreed on was only a declaration. As a result, the question whether ASEAN and China could ever get a code of conduct in the South China Sea remained. All the claimants have been consistent with their claims of sovereignty and jurisdiction, and they were unable to make any concession on this matter in the political declaration. Therefore, it could not function as a preventive measure for the occurrence of incidents in the South China Sea.⁴¹ Nevertheless, the signing of the DoC was considered as a breakthrough in the disputes. It showed that China and ASEAN member states acknowledged the importance of regional security and economic development in the era of globalization, and to refocus on the economic dimension of their relationship.⁴² For several years after the signing, the South China Sea was stable with no serious incident. All of the claimants followed the provision not to inhabit unoccupied features.

The tensions started to escalate in 2007, when China applied a series of assertive activities in the areas that it claims, such as the announcement of establishing Nansha city, which included the Paracel and Spratly Islands and the deployment of more naval power and law-enforcement forces in the South China Sea. These activities caused concerned among other claimants and ASEAN. They also demonstrated the failure to follow the DoC, and challenged ASEAN credibility and its role as the center of Asian's Southeast Asian security architecture.⁴³ In the years 2010 and 2011, when Vietnam and Indonesia chaired ASEAN respectively, there were efforts to reduce tensions and bring the South China Sea issues to the table. For example, at the ARF Ministerial Meeting in Hanoi in July 2010, Vietnam was on the same sheet of music with Indonesia and the U.S. when they raised the territorial disputes in the South China Sea in the discussions.⁴⁴

ASEAN continued to make efforts in sustaining the dialogue channel for discussing the South China Sea issue. At an informal ASEAN Foreign Ministers' Meeting held on 16 January 2011, the participants discussed the South China Sea issue, and agreed to seek a joint consensus with China toward creating a CoC.⁴⁵ In July 2011, China and ASEAN held the Senior Officials' Meeting for the implementation of DoC in Bali, Indonesia. The two sides agreed on the guidelines to implement the DoC and reached a consensus on the future work, making a break through to advance the implementation process and push for pragmatic cooperation in the South China Sea.⁴⁶ China seemed to be satisfied with the outcome, as it had not made any concessions and gained respect for its constructive attitude. Meanwhile, ASEAN considered it as a step toward achieving a formal CoC despite China's reluctance to it.⁴⁷

ASEAN consensus and its efforts toward a CoC took a huge step back in 2012 when Cambodia chaired ASEAN. Influenced by Chinese lobbies and having no direct national interests in the South China Sea disputes, Cambodia kept the issue off the agenda of the ASEAN Summit in April 2012, despite the frustration of other ASEAN member states, especially the Philippines and Vietnam.⁴⁸ Prior to this, during Chinese President Hu Jintao's official visit to Cambodia, Phnom Penh said it shared China's belief that the South China Sea issue should not be internationalized.⁴⁹

In its 45th AMM in July 2012, foreign ministers of ASEAN agreed to the key elements of the CoC. It was an important step to push up negotiation with China for the adoption of CoC. However, it was also in this meeting that for the first time in ASEAN's history, no joint communiqué was issued. Several ASEAN member states blamed each other for the failure. Cambodia argued the failure of the AMM to reach a joint communiqué was due to the Philippines' and Vietnam's insistence on including a reference to Scarborough Shoal and EEZs in the final text. Cambodia blamed these two countries for blocking a consensus from being adopted.⁵⁰ Meanwhile, the Philippines accused Cambodia of doing China's bidding.⁵¹ The failure caused the skeptical sense of ASEAN's ability to evolve and settle tough issues. Analysts were wondering about the fate of an association founded on the principles of solidarity, consensus, and consultation as well as the unity of ASEAN as the center for stability, cooperation, and security in the region.⁵² In an effort to restore unity in ASEAN ranks and commit ASEAN to a common position, after the AMM, the Indonesian Foreign Minister had a shuttle diplomacy to five ASEAN member states, namely the Philippines, Vietnam, Thailand, Cambodia, and Singapore. His effort brought about the agreement of a six-point proposal of the CoC

including: the full implementation of the DOC; the guidelines for the Implementation of the DoC; the early conclusion of a Regional CoC in the South China Sea; the full respect of the universally recognized principles of international law including the 1982 UNCLOS; the continued exercise of self-restraint and non-use of force by all parties; and the peaceful resolution of disputes in accordance with the universally recognized principles of international law including the 1982 UNCLOS.⁵³ On 20 July 2012, Cambodia's Foreign Minister Hor Namhong, acting in his capacity as ASEAN Chair, officially announced this proposal.

China responded to these evolvments by stating that it valued its relationship with ASEAN and was willing to work together with the group's members to implement the DoC and opened to consultations with ASEAN on the conclusion of a CoC.⁵⁴ However, it also stressed that all concerned parties must act in strict accordance with the DoC to create the essential conditions and atmosphere for a CoC.

The process toward a CoC of ASEAN got new motivation in 2013. Brunei, the Chairman of ASEAN this year, has made the CoC a priority. The new ASEAN General Secretary Le Luong Minh in his inaugural speech expressed wishes to achieve an early conclusion of the CoC.⁵⁵ Singapore and Indonesia have also tried to make it happen.⁵⁶ All their efforts have brought about significant results when all the Association's members including Cambodia and Myanmar have expressed their support for the CoC throughout ASEAN's meetings. In August, after a two-day meeting in Hua Hin, Thailand, foreign ministers from 10 ASEAN's member states agreed to "speak in one voice" while seeking for an "early conclusion of a CoC" with China.⁵⁷ In the meantime, China also accepted to hold official consultations over the CoC when its Foreign Minister

met with his ASEAN counterparts at China-ASEAN Ministerial Meeting in Brunei in June. In September 2013, for the first time, ASEAN's and China's high-ranking officials had met in a series of meetings in Suzhou, China to discuss the feasibility of a CoC in the South China Sea. The results of the meeting were the adoption of a work plan for 2013, the improvement of an eminent persons group to offer technical advice and the agreement to meet in Thailand in the first quarter of 2014. After a long process, overcoming a number of obstacles, this was really a positive signal for both sides, particularly for ASEAN.

ASEAN now seems to be more unified and determined with its key members active in working to reach a CoC with China and in supporting ASEAN's diplomatic efforts. However, challenges still lie ahead. Whether ASEAN and China can reach a CoC or not depends on the ASEAN's unity and commitment on the issue as well as China's attitude toward it. Skeptical analysts still argue that China is not intent on creating a CoC in a timely manner. It still prefers to discuss the issue bilaterally rather than in a multinational forum.⁵⁸ China claims most of the South China Sea, and with its larger size and stronger military, it is unlikely that Beijing will change if a CoC come into force. Chinese President Xi Jinping's exhortation to a Politburo study session in July 2013 suggesting that settling maritime territorial disputes did not mean abandoning "core national interests" which it still held paramount.⁵⁹

This chapter has used Liberalism to examine key principles of ASEAN on conflict management namely the non-interference and consultation along with consensus. In ASEAN history, these two principles have made it a unified organization and helped ASEAN to avoid war or conflict between its member states. Even though there are

several shortcomings, these principles will still be the guidelines for the ASEAN agenda in the foreseeable future.

ASEAN-central security mechanisms, like ADMM and ARF, have also contributed to the maintenance of peace, stability and development in the region. In the future, they will still be key factors in building trust, mutual understanding, and fostering security cooperation among participants toward the goal of effectively coping with traditional and non-traditional security challenges in the region.

ASEAN is the only regional organization in Southeast Asia that has actively participated in defusing tensions in the South China Sea, and seeking a long-term solution for the issue. It has applied its norms and principles and used its different security mechanisms like ARF, ADMM and workshops to bring all disputants to the table to discuss finding a peaceful conflict settlement. Although what it has achieved is considerably limited due to its loose internal ties and the interference and influence from external powers, ASEAN's role in seeking long-term solutions, first and foremost is the implementation of a binding CoC, is still critical. Its success depends on whether it can strengthen its unified position on the issue or not and how much pressure it could put on China to work on the issue.

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CHAPTER 6

CONCLUSION

The purpose of this thesis is to examine ASEAN's capability in managing the disputes in the South China Sea. It was accomplished by first analyzing China's interests in the South China Sea, its strategies and policy towards the disputed islands and their adjacent waters in the region. It continued with the examination of the responses by the Philippines and Vietnam - the two ASEAN member states that have the most disputes with China in the South China Sea. The thesis then looked at ASEAN's main norms and principles for conflict management, ASEAN-central security mechanisms, namely ADMM and ARF, and ASEAN's efforts to work with China in order to reduce tensions and manage the disputes in the South China Sea.

The thesis argues that China has numerous interests in the South China Sea, and together with its emergence as a world power, its interests there will continue to grow. Therefore, it seems unlikely that China will get any concession or compromise on the issue of sovereignty.

In the past years, China has applied different strategies, namely a delaying strategy, a salami-slicing strategy, and a cabbage strategy, to gradually turn disputed islands and waters into its own territory. Its actions have been systematic and none of them can be considered as an act of war. However, the combination of them has brought about remarkable results when it has been able to take control of a number of islands in the disputed Spratly Islands, Mischief Reef, and recently the Scarborough Shoal. As a result, China is likely to use them in the coming years.

China's policy towards the disputes in the South China Sea has been consistent with Deng Xiaoping's guidelines of "sovereignty is ours, set aside disputes, pursue joint development."¹ In negotiations to solve the disputes, China pursues bilateral discussion while it rejecting multilateral settlement. However, experiencing the unification of ASEAN and the possibility of interference from external powers, recently China has adjusted its policy and agreed to discussions with ASEAN for a binding Code of Conduct (CoC).

In response to China's assertiveness, the Philippines and Vietnam have taken necessary steps to protect their claims. They both have similar approaches such as: relying on the agenda of ASEAN-central diplomacy and its framework of multilateral dialogues; actively cooperating with other ASEAN member states to engage China for a binding CoC; committing to solve the dispute on the basics of international law of the sea and the UNCLOS; strengthening their relationships with their neighboring states as well as external powers; and building up their self-defense capabilities. However, due to their dissimilarities in history, geography, culture, political and economic relations with China, they also have different approaches toward the disputes. While the Philippines reaffirmed its alliance with the U.S and brought its disputes with China in the South China Sea to United Nations arbitration, Vietnam focuses on self-defense and pursues bilateral discussion with China on issues related to only two countries and multilateral dialogues on issues that are related to other countries.

For ASEAN, the thesis concludes that the Association is not capable of settling the South China Sea disputes because it is not a direct disputed party. However, it still plays a critical role in managing tensions, protecting its claimants' interests in the South

China Sea, and working with China toward the conclusion of a CoC, which has both political commitment and legal status. ASEAN can only do it as long as it can get consensus from all of its member states. This is not an easy task since its member nations are so different in geography, history, culture, political structure, economic development level, relationships with China, and interests in the South China Sea. ASEAN leaders have tried to bring all members together, and their efforts have paid off in 2013 when ASEAN finally got a consensus on negotiating with China toward a CoC. However, it seems that ASEAN could only get that consensus after China expressed its own willingness to discuss the CoC, and put no pressure on countries which have less interest in the South China Sea, like Cambodia and Myanmar. The road toward that CoC is still a long way ahead, and even if ASEAN and China can reach it, there is no guarantee that all involving parties will strictly follow it, particularly China since it is the only external power that is a claimant in the disputes.

Concerning the prospect of addressing the disputes between China and ASEAN's claimants, based on realism and the approaches of claimants, it is not likely to resolve the issues. On one hand, China still reaffirms its policy of solving the disputes by bilateral negotiation and rejects multilateral discussion. Moreover, due to its huge interests in the South China Sea and the high domestic support in favor of a tough Chinese stance toward the disputes, China is unlikely to reduce any dash line in the nine-dash line that it first drew more than six decades ago. On the other hand, other South China Sea claimants like the Philippines and Vietnam also assert that they are willing to sit at a bilateral table to solve the disputes in areas that involve only two claimants. At the same time, in areas which have more than two parties, they claim the territory should be discussed in

multilateral negotiations. Besides that, they all try to improve their defense capabilities and their leaders repeatedly state that territory is something that will not be compromised. Therefore, it is predictable that there will not be any feasible prospects that the disputes in the South China Sea will be resolved in the near future, and the situation there continues to be complicated, and might potentially lead to conflict if the concerned parties do not constrain themselves.

Recommendations

In order to successfully play the key role in managing conflict in the South China Sea, ASEAN should accomplish the following suggestions. First, ASEAN should enhance its central role by fostering its goal to build an ASEAN community in 2015 comprising three pillars of political and security cooperation, economic cooperation and social-cultural cooperation. It means ASEAN member states will integrate more deeply and broadly into the organization and they will see greater benefit in maintaining a strong ASEAN. As a result, a consensus would be easier to reach since all members may see their interests there and feel more responsibility as a community.

Second, ASEAN needs to strengthen its existing security mechanisms like ARF and ADMM Plus, taking advantage of them to involve external powers to discuss regional security challenges thus enhancing security cooperation, building mutual trust and understanding, and managing any hostile actions of claimants which would cause regional instability.

Third, ASEAN can take advantage of its role as a consultant to encourage claimants to set up joint regimes for the effective exploitation and management of natural resources in the South China Sea. These would include a joint regime to manage fishing

activities and protect the ocean environment; one to explore and exploit hydrocarbon resource in disputed areas that are not within the EEZs of any neighboring nations; and a regime to respond to incidents and natural disasters in the South China Sea.

Since most of external powers have a direct stake in freedom of navigation in the South China Sea and in regional stability generally, particularly the U.S., Japan, and India, ASEAN should take advantage of their support to consolidate its position in negotiations with China. For example, it can use the U.S. support for the CoC and influence on nations like Cambodia and Myanmar that have few interests in the South China Sea to support a consensus in ASEAN on the issue.

Possible Future Research

This thesis has analyzed a wide range of information on the evolution of South China Sea disputes, focusing on China's interests, strategies, and policy, and assertive positions toward the disputes and ASEAN's role in managing tensions and maintaining stability and security in the South China Sea. As the situation continues to evolve in the coming years and the U.S. continues to pivot its policy to Asia, there is no shortage of opportunities for additional research. There are several spheres that other research can focus on including: the role of U.S in maintaining the freedom of navigation in the South China Sea and regional stability; Vietnam's historical and legal documents on the Paracel and Spratly Islands; and the role of ASEAN security mechanisms in maintaining peace, stability and security in the region.

¹Storey, "China's Bilateral and Multilateral Diplomacy in the South China Sea," 56.

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